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Contents

Federal Register

Vol. 69, No. 134

Wednesday, July 14, 2004

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:
Memorandums:
Memorandum of July 5, 2004 42087

9 CFR

1 42089
2 42089

Proposed Rules:

50 42288
51 42288
52 42288
53 42288
54 42288
55 42288
56 42288
57 42288
58 42288
59 42288
60 42288
61 42288
62 42288
63 42288
64 42288
65 42288
66 42288
67 42288
68 42288
69 42288
70 42288
71 42288
72 42288
73 42288
74 42288
75 42288
76 42288
77 42288
78 42288
79 42288
80 42288
81 42288
82 42288
83 42288
84 42288
85 42288
309 42288
310 42288
311 42288
318 42288
319 42288

14 CFR

1275 42102

Proposed Rules:

121 42324
125 42324
135 42324

16 CFR

305 42107

17 CFR

Proposed Rules:

247 42302

21 CFR

189 42256
700 42256

Proposed Rules:

189 42275
589 42288
700 42275

30 CFR

3 42112

32 CFR

260 42114

33 CFR

165 42115

40 CFR

60 42117
62 42117

Proposed Rules:

60 42123
62 42123

47 CFR

Proposed Rules:

64 42125

49 CFR

Proposed Rules:

571 42126

50 CFR

679 42122

Proposed Rules:

32 42127
679 42128

Federal Register
Vol. 69, No. 134
Wednesday, July 14, 2004

Presidential Documents

Title 3—

The President

Memorandum of July 5, 2004

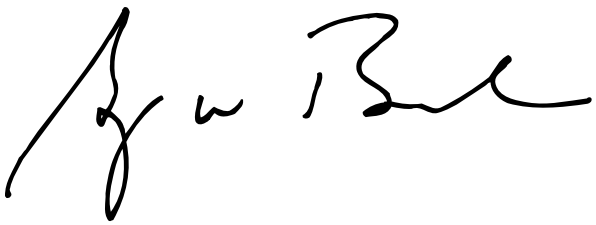
Delegation of Authority Under Section 517(a) of the National Defense Authorization Act for Fiscal Year 2004

Memorandum for the Secretary of Defense

By the authority vested in me the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the authority vested in the President under section 517(a) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

The authority delegated by this memorandum may be redelegated in writing no lower than the Under Secretary of Defense level.

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision. You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 5, 2004.

[FR Doc. 04–16040
Filed 7–13–04; 8:45 am]
Billing code 5001–06–P

Rules and Regulations

Federal Register
Vol. 69, No. 134
Wednesday, July 14, 2004

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 97–121–3]

RIN 0579–AA94

Animal Welfare; Inspection, Licensing, and Procurement of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare Act regulations to revise and clarify the exemptions from the licensing requirements, the procedures for applying for licenses and renewals, and the restrictions upon the acquisition of dogs, cats, and other animals. These actions are necessary to help ensure compliance with the regulations and the Animal Welfare Act.

DATES: *Effective Date:* August 13, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Secretary of Agriculture has delegated the responsibility of enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). The regulations established under the AWA are contained in title 9 of the Code of Federal Regulations (9 CFR), chapter I, subchapter A, parts 1, 2, and 3. Part 1 defines various terms used in part 2. Part 2 (referred to below as the regulations) generally provides administrative requirements and sets forth institutional responsibilities of regulated persons under the AWA. These administrative requirements and institutional responsibilities include the requirements for the licensing and registration of dealers, exhibitors, and research facilities, and standards for veterinary care, identification of animals, and recordkeeping.

On August 4, 2000, we published in the **Federal Register** (65 FR 47908–47918, Docket No. 97–121–1) a proposal to amend the regulations by revising and clarifying the exemptions from the licensing requirements, the procedures for applying for licenses and renewals, and restrictions upon the acquisition of dogs, cats and other animals.

We solicited comments concerning our proposal for 60 days ending on October 3, 2000. At the request of several commenters, we extended the comment period to November 20, 2000 (65 FR 62650, Docket No. 97–121–2). We received 395 comments by that date. They were from private citizens, professional organizations, licensees, and Congressional representatives.

General Comments

A number of commenters offered general support for the proposed rule and APHIS' efforts to strengthen the licensing and renewal requirements. Many felt that these changes would help to improve conditions for the animals.

Several commenters stated that the AWA is unconstitutional and that the Government should stay out of their private lives. Several commenters also stated that changes in the regulations are unnecessary and that we merely need to enforce the requirements already in place. We disagree. The United States Department of Agriculture (USDA) has a duty to implement and enforce the AWA. APHIS believes that the proposed changes will improve the implementation of the AWA.

Several commenters stated that APHIS should not take on additional regulatory responsibilities until it is determined that there is sufficient manpower and budget to support the activity. One commenter expressed concern that APHIS had not considered how many additional entities would need to be licensed with the proposed regulation of small exotic or wild mammals. The commenter wondered if APHIS has the resources to handle these additional entities. We do not believe that implementing the changes we proposed will increase our workload under the AWA.

One commenter stated that many people were not aware of the proposed rule, especially if they did not have access to the Internet, and several commenters requested a second extension of the comment period. As evidenced by the number and diversity of comments we received, we believe that we provided adequate notice and opportunity for comment.

One commenter requested a personal reply. APHIS' policy is not to respond directly to individual commenters, but to take all comments into consideration and address them in another document published in the **Federal Register**, in this case, a final rule.

Some commenters expressed concern that the proposed rule would put dog and cat dealers out of business, and they questioned why we regulate dogs and cats at all. The AWA specifically covers dogs and cats. APHIS does not believe that the proposed changes impose significant burdens.

Several commenters argued that dogs and cats should not be used in research, and that budget issues for researchers should not be dictating regulations. The AWA specifically prohibits the USDA from dictating what research is done (7 U.S.C. 2143). If research is done using species covered by the AWA, the research facility must comply with the AWA and regulations.

One commenter questioned why the proposed rule focused on dogs and cats when it had ''started out aimed at dangerous animals.'' Although we did propose changes to § 2.131 related to experience and knowledge required by licensees who maintain wild or exotic animals, the focus of the proposed rule was not on dangerous animals. Rather, the proposed rule was designed to revise and clarify the exemptions from the licensing requirements, the procedures for applying for licenses and renewals, and the restrictions upon the acquisition of dogs, cats, and other animals.

Based on the large number of inquiries concerning the scope and intent of the proposed rule, we wish to

clarify that the AWA and the regulations regulate the wholesale pet industry, not the retail pet industry. Sales by retail pet stores are not regulated. The term ''retail pet store'' is defined in § 1.1 of the regulations as ''any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and cold-blooded species. Such definition excludes—(1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes; (2) establishments or persons exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, *etc.*; (3) any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; and (4) any establishment wholesaling any animals (except birds, rats and mice). (5) Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.''

Requirements and Application—Exemptions From Licensing

Many commenters addressed the proposed amendments to § 2.1(a)(3)(iii) and (iv), which concern exemptions from licensing requirements.

In § 2.1, proposed paragraph (a)(3)(iii) exempts from licensing any person who maintains a total of three or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells only the offspring of these dogs, cats, or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license.

Several commenters requested that we define ''small exotic or wild mammal.'' Some commenters requested a specific list of animals which would be considered small or exotic wild animals, and one commenter suggested that we identify general qualifications, such as adult size, to define these animals. One commenter expressed concern that these terms would create a loophole in the regulations.

We listed in proposed § 2.1(a)(3)(iii) some animals that we consider to be included in the term ''small exotic or wild mammal.'' This list merely identifies the types of animals normally considered to be in this category; it is not intended to be an exhaustive list. Including an exhaustive list would be difficult and counterproductive, since additions or deletions from such a list in the regulations would require rulemaking, and we cannot predict what animals may be marketed as pets in the future. Accordingly, we are making no changes based on these comments.

Another commenter requested that we define ''breeding female.'' The commenter questioned whether an animal capable of reproducing would be considered the same way as a pregnant animal. For purposes of the AWA, ''animal'' is defined in § 1.1 as including any warm-blooded animal (not exempted elsewhere) that is used or intended for use in regulated activities. Consequently, if an animal is being kept to produce offspring for sale into the wholesale pet trade, for research, or for teaching or exhibition purposes, that animal will be considered covered under § 2.1(a)(3)(iii), even if it is not pregnant or being bred during the current breeding cycle. This prevents a person from rotating animals in the breeding program to avoid licensing requirements. For these reasons, we are making no change based on this comment.

One commenter suggested that APHIS exempt from licensing any person who maintains a total of five or fewer breeding female small exotic or wild mammals (commonly known as pocket pets). We proposed to amend § 2.1(a)(3)(iii) to include in the exemption from licensing persons who maintain three or fewer breeding female pocket pets on a single premises because we do not believe that the risk associated with their maintenance warrants our inspection of the premises or requires the issuance of a license. We believe that the same provisions should apply to small exotic and wild animals as apply to dogs and cats. Therefore, we are making no change based on this comment.

One commenter stated that legitimate breeders need more than three breeding females on the premises and that the proposed regulations harass and tax legitimate breeders, rather than regulating ''puppy mills.''

The exemption for three or fewer breeding females is designed to exempt *de minimis* activities. Given that the average litter size for most dogs and cats is 3 to 8 offspring and each animal may have 1 to 2 litters per year, we believe that wholesale dealers who maintain more than three breeding females on their premises need to be licensed and inspected.

The current § 2.1(a)(3)(iv) exempts from licensing any person who sells fewer than 25 dogs and/or cats per year, which were born and raised on his or her premises, for research, teaching, or testing purposes or to any research facility and is not otherwise required to obtain a license. The proposed rule did not create the exemption but merely clarified it so that persons acting in concert could not evade the limitation.

A number of commenters argued that the limit for exemption from licensing should be reduced to three or fewer. Similar changes have been suggested in the past. However, since most dogs and cats have an average litter size of more than three animals, we believe such a provision would be unduly limiting. Individuals would be prohibited from selling even one litter a year for regulated purposes unless they were licensed under the AWA. Thus, a limit of three or fewer animals would not be a practical or enforceable requirement. The threshold of 25 dogs or cats for licensure has been a regulatory provision for over 15 years. In addition, one commenter argued that there is a disparity in the parameters used to determine activity thresholds for licensure, with no direct correlation between the provisions for 25 or fewer dogs or cats sold per year, 3 or fewer breeding females, and the $500 gross income from the sale of domestic animals for regulated purposes (see § 2.1(a)(3)). We disagree. All of these provisions are designed to exempt *de minimis* activities. The exemption for 25 or fewer dogs or cats sold per year is directly related to the exemption for 3 or fewer breeding females since the average litter size for most dogs and cats is 3 to 8 offspring and each animal may have 1 to 2 litters per year (see § 2.1(a)(3)(i) and (iii)). Furthermore, the exemption for the sale of any animal except wild or exotic animals, dogs, or cats is limited to $500 gross income per year (see § 2.1(a)(3)(ii)). For these reasons, we are making no changes based on this comment.

In § 2.1, proposed paragraph (a)(3)(iii) states that the exemption from licensing does not extend to any person residing in a household that collectively maintains a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, nor to any person maintaining breeding female dogs, cats, and/or small exotic or wild mammals on premises on which more than three breeding female dogs, cats, and/or small exotic or wild mammals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than three breeding

female dogs, cats, and/or small exotic or wild mammals regardless of ownership. Similarly, proposed paragraph (a)(3)(iv) states that the exemption from licensing does not extend to any person residing in a household that collectively sells 25 or more dogs and/or cats, regardless of ownership, nor to any person acting in concert with others where they collectively sell 25 or more dogs and/or cats, regardless of ownership.

One commenter expressed concern about the phrase ''acting in concert'' in proposed §§ 2.1(a)(3)(iii) and 2.1(a)(3)(iv). Specifically, the commenter was concerned that breeders with partial ownership in a number of breeding animals would be considered to be ''acting in concert'' with their partners and, therefore, would not be exempt from licensing.

The proposed changes to §§ 2.1(a)(3)(iii) and 2.1(a)(3)(iv) are designed to close a loophole in the regulations. Some individuals have contended that they are not required to have a license even when they keep more than three breeding female dogs and/or cats on the same premises as long as no single member of the household owns more than three. However, when several members of the same household (or other persons acting in concert) are maintaining breeding female dogs or cats on the same premises such that the number of breeding females in total is more than three, we believe that the activities are no longer *de minimis* and the dealers need to be licensed. For similar reasons, we believe that dealers need to be licensed if 25 or more dogs and/or cats are sold for research, teaching, or testing purposes per year from the premises or by members of the same household or other persons acting in concert, regardless of ownership. For these reasons, we are making no changes based on this comment.

Currently, § 2.1(b) provides that a person who is exempt from licensing under § 2.1(a)(3)(iv) may apply for a voluntary license. Since this option has rarely been exercised, we proposed to eliminate this provision. We received several comments on this issue. All of the commenters supported our proposal to eliminate voluntary licenses.

Requirements and Application—Payment of Fees

Currently, § 2.1, paragraphs (d)(2), (e)(1), and (e)(2) (redesignated as (c)(2), (d)(1), and (d)(2) in this final rule) provide that a license will not be issued until payment has cleared normal banking procedures. We proposed to remove this provision. Commenters generally supported the issuance of a license when the fee is paid, rather than when a check clears. One commenter supported proposed § 2.1(d)(1) as long as it was understood that a returned or bounced check would result in denial of the license or renewal. We note that a returned check for a license or renewal will result in denial of the license or renewal.

Several commenters also supported proposed provisions to submit fees for licenses to the appropriate Animal Care (AC) regional office, rather than the AC Regional Director, and to specify that the license fee is due on or before the date of expiration of the license.

One commenter recommended that we allow fees for licenses and renewals to be paid by credit card. We currently allow fees to be paid with major credit cards. To clarify the available payment options, in this final rule, § 2.1(d)(1) and § 2.1(d)(2) provide that payment of fees for licenses and renewal of licenses, as well as for changes in class of license, can be made using a credit card, in addition to personal check, certified check, cashier's check, and money order. Regional offices can be contacted for details on these transactions.

Acknowledgment of Regulations and Standards

We proposed to amend § 2.2(b) to remove the provision stating that APHIS will supply copies of the regulations and standards to licensees as part of the license renewal process. We believed that most parties did not want or need these yearly copies. However, comments on this issue were split. Several commenters supported this provision as long as all regulated parties were notified of the changes in the rules, while other commenters thought that we needed to continue providing copies of the regulations and standards as part of the license renewal process.

Currently, regional offices inform all licensees and registrants of all applicable regulatory changes. In addition, all AWA regulations and standards are available on the Internet at *http://www.aphis.usda.gov/ac.* To accommodate licensees and registrants who wish to continue to receive yearly copies of the regulations and standards, copies of the regulations and standards will be available from the regional offices upon request. We do not, however, plan to automatically send copies of this material each year. Therefore, we are making no changes to § 2.2(b) based on these comments.

Demonstration of Compliance With Standards and Regulations

In § 2.3, proposed paragraph (b) states that each applicant for an initial license must be inspected by APHIS and demonstrate compliance with the regulations and standards before APHIS will issue a license. If the first inspection reveals that the applicant's animals, premises, facilities, vehicles, equipment, other premises, or records do not meet the requirements of 9 CFR Chapter 1, subchapter A, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. An applicant who fails the first inspection will have two additional chances to demonstrate his or her compliance with the regulations and standards through a second inspection by APHIS. The applicant must request the second inspection, and if applicable, the third inspection, within 90 days following the first inspection. If the applicant fails inspection or fails to request reinspections within the 90-day period, he or she will forfeit the application fee and cannot reapply for a license for a period of 6 months from the date of the failed third inspection or the expiration of the time to request a third inspection.

One commenter suggested that APHIS should ensure that new licenses are not issued without careful scrutiny of the facility. The commenter asserted that a research facility, that identified itself as a pet shop, was issued a license.

Before an initial license is issued, an applicant must be inspected by APHIS and demonstrate compliance with the regulations and standards. During the inspection, APHIS ascertains the nature of the operation and determines if the applicant needs to be licensed or registered. Under § 2.30, a research facility must be registered, not licensed.

Several commenters stated that we should allow only two prelicensing inspections per application while others stated the entire prelicensing period should be only 60 days in length. Most other commenters supported a time limit on the prelicensing process, although one commenter felt the timeframe should be extended to 6 months.

A review of Animal Care records indicates that few applicants require three prelicensing inspections to complete the process, but even those applicants that require three prelicensing inspections usually complete the process within 90 days.

We encourage applicants to establish contact and dialogue with their inspector prior to requesting a prelicensing inspection to make sure the facility is in compliance. It will not increase our regulatory burden to maintain the availability of three

prelicensing inspections. Additionally, the 90-day period will allow for most instances when inclement weather may delay completion of required alterations to a facility. Therefore, we are making no change based on these comments.

Several commenters suggested that anyone who failed to complete or pass the prelicensing inspection process within the proposed timeframe should be required to wait 1 year, rather than 6 months, to reapply. The commenters provided no explanation to support the longer waiting period. To date, we have not experienced any significant enforcement problems related to the 6-month waiting period. Therefore, we are making no change based on these comments.

One commenter requested that APHIS clarify § 2.3(b) to indicate the application termination and waiting period if the applicant never requests reinspection. In § 2.3, proposed paragraph (b) states that if the applicant fails inspection or fails to request reinspections within the 90-day period, he or she will forfeit the application fee and cannot reapply for a license for a period of 6 months from the date of the failed third inspection or the expiration of the time to request a third inspection. We believe that proposed § 2.3(b) adequately describes the process for demonstrating compliance with the standards and regulations, and additional clarification is not necessary. Accordingly, we are making no change based on this comment.

Duration of License and Termination of License

Currently, § 2.5(a) provides that a license shall be valid and effective unless the license has been revoked or suspended pursuant to section 19 of the AWA, the license is voluntarily terminated upon request of the licensee, the license has expired or been terminated under the regulations, or the applicant has failed to pay the annual license fee.

One commenter recommended amending § 2.5(a) to provide that a license may be denied to a person who has not paid a monetary penalty assessed for AWA violations. Such a change would be impractical given due process considerations and provisions for monetary penalties to be deferred, suspended, or subject to a payment plan. Accordingly, we are making no change based on this comment.

Currently, § 2.5(b) provides that APHIS will notify a licensee by certified mail at least 60 days prior to the expiration date of the license. We proposed to eliminate this notification by certified mail.

Several commenters requested that license renewal notices continue to be delivered via certified mail. These commenters were concerned that the notices would be lost in regular mail and noted that the cost of certified mail was not prohibitive. Another commenter stated that delivery of license renewal notices via regular mail was fine, but recommended that a second notice be sent as a backup in case the first notice was never delivered.

We do not believe that using regular mail decreases our ability to communicate with licensees. All licensees rely on regular mail to run their businesses and all licensees are required to notify Animal Care of any change in address. Furthermore, expiration dates are printed on all license certificates and provide additional notice to the licensee. Therefore, we are making no change based on these comments.

Current § 2.5(c) provides that licensees must accept delivery of registered mail or certified mail notice and provide the AC Regional Director notice of their address in accordance with § 2.1. However, since we proposed to eliminate notification by certified mail, this provision is no longer necessary and should have been removed in the proposed rule. Therefore, we are removing § 2.5(c) in this final rule and redesignating paragraphs (d) through (f) as paragraphs (c) through (e), respectively.

Several commenters stated that the provisions in proposed §§ 2.1(d) and 2.5 related to payment of fees were confusing. The commenters noted that proposed § 2.1(d)(1) provides that a returned check will be deemed nonpayment of fee and will result in the denial of the license; proposed § 2.5(a)(4) provides that a license shall be valid and effective unless the annual license has not been paid, *provided, however,* that a grace period of 30 days is provided subject to the payment of a late payment fee of $25 and, if applicable, any fee for a check that has been returned unpaid; and proposed § 2.5(b) provides that a license will expire and automatically terminate if the annual license fee is not received by the appropriate AC regional office on or before the expiration date of the license. One commenter recommended removing the grace period from the regulations.

We agree that the grace period provided for in proposed § 2.5(a)(4) is confusing in light of the language in proposed § 2.5(b), which provides that a license will be automatically terminated if the annual license fee is not received on or before the expiration date of the license. Initially, we had contemplated proposing a grace period for late payment of fees, and provisions for a grace period appeared in early drafts of the proposed rule. However, after further review, we elected not to propose a grace period for late payment of fees and the inclusion of the grace period provision in proposed § 2.5(a)(4) was an oversight. For this reason, we are removing the grace period provision in § 2.5(a)(4) in this final rule.

Application and Annual License Fees

We proposed to amend the regulations at § 2.6, which set out annual license fees, to combine the $10 application fee for license renewals (or change of license class) with the annual license fee so that persons already licensed would need to submit only one check or money order annually. All commenters on this issue supported the proposed changes.

Licensees Whose Licenses Have Been Suspended or Revoked

Currently, § 2.10(a) provides that any person whose license has been suspended for any reason shall not be licensed in his or her own name or in any other manner within the period during which the order of suspension is in effect. Furthermore, no partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed during that period. We proposed to amend § 2.10(a) by providing that no license will be renewed during the period that it is suspended.

One commenter wondered whether, under § 2.10, a license not renewed during a suspension of licensure is automatically terminated. The commenter stated a license should be terminated if the expiration date occurs during a period of suspension. A license suspension is not intended to be a license termination or denial. If a license expires during a suspension, the licensee must follow the renewal process when the suspension is lifted, and a decision will be made at that time about whether the license should be renewed. However, to clarify this issue, § 2.10(a) in this final rule states that renewal of a license may be initiated during a suspension in accordance with §§ 2.2(b) and 2.12.

Denial of Initial License Application

Currently, § 2.11(a) provides that a license will not be issued to any applicant who: (1) Has not complied with the requirements of §§ 2.1, 2.2, 2.3, and 2.4 and has not paid the fees indicated in § 2.6; (2) is not in

compliance with any of the regulations or standards in subchapter A; (3) has had a license revoked or suspended; (4) has been fined, sentenced to jail, or pled *nolo contendere* (no contest) under State or local cruelty to animal laws within 1 year of application; or (5) has made false or fraudulent statements, or provided any false or fraudulent records to the Department.

We proposed to amend § 2.11(a) by revising paragraphs (a)(4) and (a)(5) and adding a new paragraph (a)(6). These proposed paragraphs provided that a license will not be issued if the applicant: (4) Has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or after 1 year if the Administrator determines that the circumstances render the applicant unfit to be licensed; (5) is or would be operating in violation or circumvention of any Federal, State, or local laws; or (6) has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed, and the Administrator determines that the issuance of a license would be contrary to the purpose of the Act.

A number of commenters recommended stricter conditions for licensure. To protect both animals and USDA inspectors, several commenters recommended permanent denial of a license to any convicted felon or the equivalent, or anyone convicted of animal cruelty. One commenter recommended that any person who violated any animal-related laws be denied a license and not be allowed to assist or participate with other persons to conduct regulated activities. Another commenter recommended that no corporation whose officer(s) were convicted of a felony should be licensed under the AWA. One commenter suggested we deny a license to any person that an animal registry body (*e.g.*, American Kennel Club) finds in violation of its rules. Some commenters stated that individuals convicted of animal cruelty felonies or gross misdemeanors should be denied a license.

The changes we proposed to § 2.11(a) give the Administrator the broad discretion to deny a license to applicants who have pled *nolo contendere* to or have been found in violation of any Federal, State, or local laws or regulations pertaining to animal cruelty, or to transportation, ownership, neglect, or welfare of animals. Further, the proposed changes would authorize the Administrator to deny a license to anyone who has made false or fraudulent statements or provides false or fraudulent records to the Department or other government agencies, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the AWA. We do not believe that automatically excluding a convicted felon or someone convicted of a gross misdemeanor is necessary or appropriate. Similarly, we do not believe that automatically excluding someone who has violated an animal registry body's rules is necessary or appropriate. Furthermore, with regard to the commenters' concern for the safety of APHIS inspectors, we note that no inspector is required to inspect a premises alone. If an APHIS inspector has safety concerns, he or she may be accompanied by local law enforcement or other APHIS personnel. Therefore, we are making no changes in response to these comments.

One commenter suggested that any conviction for animal cruelty, not just those in the last year, should be considered when determining license eligibility. We note that proposed § 2.11(a)(4) provides that a license will not be issued to any applicant who has pled *nolo contendere* to or has been found in violation of any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, *or after 1 year if the Administrator determines that the circumstances render the applicant unfit to be licensed.* Thus, we are making no changes based on this comment.

Several commenters stated that license eligibility should not be based on past convictions because everyone deserves a second chance. The intent of the AWA is to provide for the humane care and treatment of all animals covered by the Act, and prior convictions for animal cruelty are germane to deciding the appropriateness of licensure. Accordingly, we are making no change in response to these comments.

One commenter expressed concern that stipulation agreements would be considered *nolo contendere* pleas and, therefore, require automatic denial of a license or renewal of a license. This is not our intent. The provisions of any stipulation or consent decision document will specify the length of any revocation or suspension, if applicable to the agreement. The length of any such suspension or revocation will be adhered to during any application process. Such agreements will not be considered *nolo contendere* pleas that require automatic denial of licensure. Licenses will not be renewed during any period of suspension or revocation. Under these circumstances, we are making no changes in response to this comment.

One commenter stated that APHIS should be clear that the proposed conditions for licensure in § 2.11 also apply to judicial orders (*i.e.*, a judicial order in which a person has to forfeit animals and/or is prohibited from owning animals in the future). In proposed § 2.11(a)(4), we provided that a license will not be issued if the applicant is unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the AWA. Furthermore, in proposed § 2.11(d), we provided that no license will be issued under circumstances that the Administrator determines would circumvent any order suspending, revoking, terminating, or denying a license under the AWA. These provisions would apply to judicial orders, including the judicial order described by the commenter. Therefore, we are making no change based on this comment.

A number of commenters were concerned about the use of the term ''unfit'' in § 2.11(a). Several commenters requested that we define ''unfit,'' perhaps with a list of what makes a person unfit to hold a license. Several commenters requested that we delete this term altogether. Other commenters questioned our authority to judge an individual and determine them to be ''unfit.''

We are not making any changes based on these comments. The Administrator will assess the suitability, or ''fitness,'' of an applicant to provide for the humane care and treatment of animals as required by the AWA and regulations. Listing all possible reasons for this determination is not possible and any attempt to do so would remove necessary flexibility in decisionmaking. We note that any person denied a license can request a hearing to appeal the decision.

One commenter expressed concern that proposed § 2.11(a)(6) did not include the same 1-year disqualification from becoming licensed as § 2.11(a)(4). Another commenter stated that § 2.11(a)(6) was overly broad because violations of laws pertaining to ''ownership'' could refer to leash-law

violations, barking ordinance violations, etc. We realize that not every violation of law related to animals should disqualify a person from becoming licensed. That is why proposed § 2.11(a)(6) calls for a determination that the issuance of a license would be contrary to the purposes of the AWA. For this reason, we are making no change based on these comments.

We proposed in § 2.11(b) that an applicant whose license application has been denied may request a hearing, and that the license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise.

Several commenters recommended that a person denied a license be prevented from applying for another license for 1 year. Some commenters suggested even longer waiting periods before an applicant could reapply for a license. Requiring a time limit of 1 year before an application can be resubmitted has proven to be a reasonable time. We have not found a need to extend this period. After waiting a year, the applicant must go through the entire licensing process again, meeting all requirements. The applicant is again subject to all the provisions of § 2.11. There is no guarantee of a license being issued after the 1-year wait. Accordingly, we are making no changes based on these comments.

Several commenters suggested replacing the phrase ''unless the order provides otherwise'' with the phrase ''unless the order provides for a longer period of time'' because an applicant should not be able to reapply for a license less than 1 year from the date of the denial. The language in proposed § 2.11(b) is sufficient to indicate that an applicant whose license application has been denied may reapply for a license 1 year from the date of the final order denying the application, unless the hearing judge orders an extended period of license denial. While we recognize the commenters' concerns, a hearing judge may find that a shorter period of time is appropriate in a particular case. Therefore, we are making no change based on this comment.

Termination of a License

In § 2.12, we proposed that a license may be terminated for any reason that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice.

One commenter suggested that all licenses for Class B dealers be revoked at the first sign of any AWA violation and the animals should be seized without prior notice or trial. The commenter also suggested that no appeals should be allowed for revocation of a license and that no family member of an individual whose license has been revoked should be granted a license.

These recommendations would violate the principles of due process if implemented; therefore, we are making no change based on this comment. However, we note that we can prevent licensure of some persons if it is evident that such a licensure would circumvent provisions of the AWA and/or a revocation order (see § 2.11(d) in this final rule).

One commenter stated that we should not change § 2.12, allowing for individual decisions to be made on a case-by-case basis. Another commenter stated that using the phrase ''or at any time'' gives us too much power to make denials permanent, perhaps disregarding the sincere commitment of a person to change. This commenter's main concern was that APHIS has too much power to make denials permanent.

APHIS continues to look at cases on an individual basis, as warranted. The language in proposed § 2.12 allows APHIS to more effectively enforce the AWA by allowing consideration of all salient factors during the licensing process. It should be remembered that anyone denied a license is entitled to appeal the decision at a hearing. This process protects applicants whose license applications have been denied. For these reasons, we are making no changes based on these comments.

Several commenters requested that we clarify that a license renewal may be denied for the same reasons as an initial license application may be denied (*i.e.*, a license terminated for the same reasons as an initial license application may be denied). One commenter requested that we clarify that a person's license would be revoked if the person were found guilty of violating animal cruelty laws. Another commenter suggested that convictions for breaking wildlife laws should also be included. Another commenter recommended that a license be terminated pending a hearing in order to encourage compliance with the regulations and provide an incentive to expedite hearings.

These recommendations are already addressed by proposed § 2.12, which provides that a license may be terminated, after a hearing, for any reason that an initial license application may be denied pursuant to § 2.11. Therefore, we are making no changes based on these comments.

Several commenters suggested adding criteria for renewal of licenses in § 2.12. One commenter suggested that licenses should not be renewed if there were any AWA violations within the last 3 years and the facility had not been inspected within the last year. Another commenter suggested that no license should be renewed unless the facility was inspected and found compliant just prior to the renewal date.

Enforcement of the AWA is based on random, unannounced inspections to determine compliance. In addition, APHIS uses a risk-based assessment to determine minimum inspection frequency. After inspection, all licensees are given an appropriate amount of time to correct any problems and become compliant. This cooperative system has been more effective than enforcement actions for each citation. Furthermore, a significant number of citations are for conditions that do not directly or immediately impact the health and well-being of the animals. It is unrealistic and counterproductive to make license renewal contingent on not having any citations. Accordingly, we are making no changes based on these comments.

Several commenters supported the provisions for termination of licensing but expressed concern over the care of animals at facilities where such terminations were implemented. One commenter suggested that we perform additional inspections pending a termination hearing. Since we already take steps to ensure the humane care of animals in these circumstances (*e.g.*, inspect and monitor animals and assist owners with placement of the animals), we are making no change based on these comments.

Access to Premises Provided by a Responsible Adult

Section 2.126 sets forth the requirements concerning access and inspection of records and property. We proposed to amend § 2.126(b) to add a provision that a responsible adult must be made available to accompany officials during the inspection process.

Some commenters interpreted proposed § 2.126(b) to mean that an adult needed to be at the facility at all times. They stated that this would pose an undue burden and cost on the operation. Several commenters suggested that, based on the assumption that proposed § 2.126(b) would require an adult onsite at all times, the inspector notify the licensee of the

inspection date or the licensee be required to inform the inspector of his/her availability on a given day. In contrast, one commenter stated that a responsible adult should be onsite at all times that animals were present. Some commenters stated that only the owner should accompany the APHIS inspector, while other commenters stated that the responsible adult listed on the application should accompany the inspector.

We intended that a responsible adult be made available to accompany the APHIS inspector. This would not require that the adult be onsite at all times. The current regulations require that the licensee make the facility available for inspection during business hours, which is defined in § 1.1 of the regulations to mean a reasonable number of hours between 7 a.m. and 7 p.m., Monday through Friday. Therefore, we are making no change based on these comments.

Several commenters requested that we define ''responsible adult.'' It is the responsibility of the licensee to accommodate APHIS inspections, and if the owner(s) are not available, it is their responsibility to designate an adult to represent their interests with respect to the inspection. We believe that common usage of the term ''responsible'' in relation to the licensed business is sufficient to define ''responsible adult.'' Therefore, we are making no change based on these comments.

One commenter stated that APHIS inspectors should inspect the premises unaccompanied if no responsible adult is available. Another commenter noted that this would constitute an illegal search of the premises. We do not perform unaccompanied inspections for many reasons, including the safety of the inspector. Therefore, we are making no change based on these comments.

Two commenters argued that no pictures should be taken during an inspection without the owner's permission. We did not propose to amend § 2.126(a)(4) and (5), which state that APHIS inspectors may inspect and photograph the facilities, property, and animals and may document, by the taking of photographs and other means, conditions and areas of noncompliance. Taking photographs during routine inspections is sometimes necessary to document any noncompliant items and conditions. Accordingly, we are making no change based on these comments.

Handling of Animals

We proposed adding a new requirement to § 2.131 that all licensees who maintain wild or exotic animals must demonstrate adequate experience and knowledge of the species that they maintain. In the proposed rule, these animals were described as ''potentially dangerous.''

One commenter stated that some of the terminology in § 2.131 was ambiguous; specifically, the commenter wondered if the proposed requirement related to all wild or exotic animals or only to potentially dangerous animals. The commenter suggested that, if the proposed requirement related to potentially dangerous animals, APHIS should use the phrase ''inherently dangerous animals'' instead of ''potentially dangerous animals.'' The commenter noted that many species of animals can be regarded as potentially dangerous, but there are some species which pose an inherent threat.

Proposed § 2.131 is intended to apply to all wild or exotic animals, which include, but are not limited to, ''potentially dangerous animals.'' Therefore, we are making no change based on this comment.

Most commenters supported the intent of proposed § 2.131 but requested more information as to what constitutes ''adequate experience and knowledge.'' Commenters suggested that ''adequate experience and knowledge'' was equivalent to a minimum of 4 years of working with the species involved or 1,000 hours of hands-on experience with the species. One commenter said experience and knowledge of comparable species should be applicable to any requirement.

We believe that this performance based standard will provide us with sufficient discretion to analyze each unique situation. Therefore, we are making no change based on these comments. However, we note that APHIS is currently examining this issue and will initiate rulemaking for any changes deemed appropriate.

A commenter suggested that § 2.131 should apply to registrants as well as licensees. The commenter noted that some registrants may also maintain wild or exotic animals.

We do not believe it is necessary for proposed § 2.131 to apply to registrants as well as licensees. Research facilities are already required to have an Institutional Animal Care and Use Committee that is qualified through experience and expertise to assess the facility's animal program. For this reason, we are making no change based on this comment.

One commenter requested that we clarify who must have this experience (*e.g.*, the licensee, trainer, handler, caretaker, staff, *etc.*) while another commenter recommended that APHIS clarify how the cumulative knowledge and experience of an institution's staff will be acknowledged.

Institutions and corporations can only have knowledge and experience through the persons they employ or retain. We do not believe that it would be practical to attempt to specify how a licensee would possess and demonstrate adequate experience and knowledge. Accordingly, we are making no change based on these comments.

One commenter noted that there may be instances where it would be impractical or impossible for an individual to obtain experience with a particular species of animal (*e.g.*, when a zoo receives a species never before kept in captivity). The commenter recommended that APHIS consider the experience and knowledge of comparable species when determining if a person has adequate experience and knowledge of the species they maintain.

In cases where it has been impractical or impossible for an individual to obtain experience and knowledge of a particular species, APHIS has historically considered the individual's experience and knowledge of comparable species. The Administrator will continue to make determinations regarding adequate experience and knowledge on a case-by-case basis. Accordingly, we are not making a change based on this comment.

A commenter asked for clarification as to how the handling requirements in the proposed rule related to the recently published amendments to the marine mammal regulations (66 FR 239–257, Docket No. 93–076–15) and the draft policy on training and handling of potentially dangerous animals (65 FR 8318–8321, Docket No. 97–001–4). The commenter expressed concern about APHIS applying the proposed handling requirements to exhibitors maintaining marine mammals since APHIS has previously treated marine mammals as ''wild animals.''

This final rule and the marine mammal final rule address different aspects of AWA enforcement. This final rule relates to inspection, licensing, and procurement of animals, while the marine mammal final rule addresses the specific handling, care, and transportation needs of marine mammals. This final rule and the marine mammal final rule complement each other to ensure the humane care and treatment of animals covered by the AWA. As for the draft policy, APHIS will not be publishing or implementing a final policy statement on training and handling potentially dangerous animals because we have determined that any clarification of the regulations should be

accomplished through rulemaking (69 FR 30601, Docket No. 97–001–5).

One commenter asserted that all photographic shoots and animal rides should be banned. It is beyond the scope of our authority to ban photographic sessions and animal rides. Therefore, we are making no change in response to this comment.

Procurement of Animals by Dealers

Currently, § 2.132 of the regulations concerns the procurement of random source dogs and cats by Class B dealers. We proposed several changes to § 2.132 of the regulations to clarify these provisions.

One commenter wanted us to include Class A dealers in proposed § 2.132. Class A dealers breed and raise the animals they sell on their own premises. The proposal does include Class A dealers.

One commenter suggested that we hold research facilities responsible for acquisitions from unlicensed persons and hold dealers responsible for purchases from ''bunchers.'' Although ''bunchers'' are not defined under the AWA, the term is commonly considered to mean parties that collect, gather, or aggregate animals from other sources for dealers. Dealers are already responsible for the actions of their employees and agents, however described. The proposed rule would prohibit dealers from acquiring animals through ''bunchers'' who are operating as unlicensed dealers. Therefore, we are making no change based on this comment.

One commenter recommended that we retain the previous § 2.132(b), which defined random source animals. The definition of ''random source'' animals may be found in § 1.1 of the regulations. Therefore, we are making no change based on this comment.

We proposed in § 2.132(d) that no dealer or exhibitor shall knowingly obtain any dog or cat from any person who is not licensed, other than a pound or shelter, without obtaining a certification that the animals were born and raised on the person's premises and, if the animals are for research purposes, that the person has sold fewer than 25 dogs and/or cats that year, or, if the animals are for use as pets, that the person does not maintain more than three breeding female dogs and/or cats.

Several commenters supported this proposal, but recommended that we ensure that identification numbers or driver's license numbers are recorded on the certification statement and any other paperwork. Several commenters suggested that additional information be recorded, such as the animal descriptions/characteristics, phone number of seller, full name and address of seller. Other commenters suggested that, in addition to the certification statement, APHIS should require additional documentation (*e.g.*, veterinary records, pictures, *etc.*) to verify ownership.

As noted previously, we believe that the requirements in part 2 of the regulations are adequate for purposes of the AWA to establish ownership of animals. The name, address, and driver's license number of the seller are currently recorded on the acquisition/disposition records of the dealer, exhibitor, or research facility. It would be redundant to require such information on the certification statement. Furthermore, the information required in this final rule would be sufficient to initiate any formal investigations needed involving the dealers and/or the suppliers. For these reasons, we are making no changes based on these comments.

One commenter wanted to make sure that the certification statement required in § 2.35 was the same as in § 2.132. Another commenter stated that the certification requirements in § 2.35 should be the same as those found in § 2.133. The information requirements of §§ 2.35, 2.132, and 2.133 are consistent and appropriate for the intended buyers and sellers. Therefore, we are making no changes based on these comments.

One commenter stated that the current acquisition requirements in part 2 are unacceptable and negligent. The commenter suggested that APHIS attend each auction and cross-reference the names of persons observed selling animals with the forms submitted to APHIS for at least 1 year. It is not feasible for APHIS to attend every auction and cross-reference the names of persons observed selling animals with the forms submitted to APHIS. As previously noted, the current recordkeeping requirements, supplemented by the requirements in this rule, are designed to ensure that animals are legally acquired and can be traced back to their previous owners if necessary. Accordingly, we are making no change based on this comment.

Recordkeeping

The regulations currently require dealers, exhibitors, operators of auction sales, brokers, and research facilities who acquire animals from persons who are not licensed to record the driver's license number of the person. We proposed to add provisions in §§ 2.35(b)(3), 2.75(a)(1)(iii), 2.75(b)(1)(iii), and 2.76(a)(4) to allow the use of officially issued photographic identification cards for nondrivers in lieu of a driver's license. Many commenters supported the proposal to allow the use of officially issued photographic identification cards in lieu of a driver's license.

Miscellaneous

We proposed a number of minor changes to the regulations to reflect current APHIS form numbers, change references from Veterinary Services to Animal Care, correct grammar, and replace ''sector'' references with appropriate references to AC regional offices. We received one comment in support of these proposals. No negative comments were received. Therefore, we are making no changes in this final rule to the following sections: §§ 2.35, 2.38, 2.75, 2.76, 2.78, and 2.102.

We proposed in § 2.38(k)(2), compliance with standards and prohibitions, that no person shall obtain live dogs or cats by use of false pretenses, misrepresentation, or deception. Several commenters supported or strongly agreed with this provision. Accordingly, we are making no changes in response to these comments.

One commenter requested that the USDA exempt research facilities from having to be licensed as dealers if they buy, sell, trade, etc., animals incidental to research. We note that research facilities are not required to be licensed as dealers if they are buying animals, receiving or placing animals as donations, or trading animals with other research facilities. However, if a research facility is selling animals to other research facilities, pet stores, or for exhibition purposes, the research facility must be licensed as a dealer.

Several commenters stated that health certificates for animals should be used to validate ownership and help prevent the spread of disease. We believe that the requirements in part 2 of the regulations for documenting ownership are adequate for purposes of the AWA to establish ownership of animals. A related comment proposed that all animals used in research be certified as to who bred and raised them, that they were voluntarily provided to the dealer, and that the original owners agreed to their use in research. However, we believe such certificates are unnecessary because the changes to § 2.132, combined with the holding periods and other requirements of section 2158 of the AWA and § 2.101 of the regulations, provide sufficient safeguards. Accordingly, we are making no changes based on these comments.

One commenter requested that we amend the licensing requirements to eliminate all Class B dealers. Class B dealers may acquire and sell animals. There are currently fewer than 30 Class B dealers who purchase and sell random source animals. The majority of Class B dealers do not engage in random source animal activities. Elimination of random source activity would require an amendment to the AWA and is beyond the scope of this rule.

One commenter suggested that APHIS establish a definition for *de minimis* activity so that any retail pet store selling fewer than 50 pocket pets per year that would not otherwise be required to be licensed would be exempt from regulation. The commenter maintained that the regulations unreasonably burden small businesses that are already subject to State and local regulations. The regulations provide that, unless exempt under § 2.1, anyone selling any wild, exotic, or nonpet animals retail must have a license (§ 2.1(a)(3)(i)). While there may be multiple regulatory agencies affecting some businesses, these regulations cover persons who sell wild and exotic animals, which include pocket pets, under the AWA. Therefore, we are making no change based on this comment.

One commenter asked about the identity of the ''Administrator.'' The Administrator is defined in § 1.1 of the regulations and refers to the Administrator of APHIS or any other official of APHIS authorized to act for the Administrator of APHIS. Thus, although the term ''Administrator'' is used in our regulations, reporting and recordkeeping documents are generally submitted to the regional offices. All questions concerning where documents should be submitted can be directed to the appropriate regional office.

One commenter stated that the Animal Care Annual Report to Congress on the enforcement of the AWA uses the terms ''violation'' and ''alleged violation'' interchangeably and cautioned us to make sure the terms are clear and consistent in §§ 2.11 and 2.12. The term ''alleged violation'' is not used in either section, only the phrases ''operating in violation'' and ''found to have violated.''

Another commenter requested a ''no trespassing-disease control'' regulation. However, such an activity is beyond the scope of the AWA and this rulemaking.

One commenter suggested that enforcing existing temperature regulations would help control ''puppy mills.'' That issue is beyond the scope of this rulemaking.

One commenter stated that the proposed rule contained no discussion of the paperwork burden or economic burden associated with the proposed changes. Those issues were discussed under the headings ''Paperwork Reduction Act'' and ''Executive Order 12866 and Regulatory Flexibility Act,'' respectively.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities. This discussion also serves as our cost-benefit analysis. A discussion of the comments received concerning the proposal is set forth in the sections analyzing the regulatory provisions.

Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate regulations governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers.

This rule will amend the Animal Welfare Act regulations in 9 CFR part 2 to revise and clarify the exemptions from the licensing requirements, the procedures for applying for licenses and renewals, and restrictions upon the acquisition of dogs and cats and other animals.

Class A and B dealers, Class C exhibitors, registered exhibitors, research facilities, and individuals who are currently exempt from licensing are the entities that would be affected by this proposed rule. A Class A dealer breeds and raises animals to be sold for research, teaching, testing, experimentation, exhibition, or for entry into the wholesale pet trade. A Class B dealer is a person, including a broker and operator of an auction sale, whose business includes the purchase and/or resale of any animal. A Class C exhibitor or registered exhibitor is a person, including an animal act, carnival, circus, and public and roadside zoo, who shows or displays animals to the public. Research facilities include schools, institutions, organizations, or persons who use live animals in research, tests, or experiments.

Number of Breeding Females

The regulations exempt from licensing any person who maintains a total of three or fewer breeding female dogs and/or cats and sells only the offspring of these dogs and/or cats for pets or exhibition. This rule will extend this exemption from licensing to any person who maintains a total of three or fewer breeding female small exotic or wild mammals and sells only the offspring of these small exotic or wild mammals for pets or exhibition. This rule will also clarify that the exemption applies only if a total of three or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, and prairie dogs, are maintained on a single premises, regardless of who owns the animals.

Unlicensed individuals in this category primarily sell the offspring of their animals to pet stores and private citizens and their number and the quantity of their sales are unknown. The number of currently unlicensed individuals who will have to become licensed as a result of this rule is also unknown, although they are likely to be considered small entities. Those affected will either have to obtain a license and pay the associated fee,[1] or reduce the number of breeding females on their premises to three or fewer. It is necessary that these individuals be regulated in order to ensure the welfare of the animals in these establishments.

The extension of the licensing exemption to small exotic or wild mammals should have little impact. With the extension of this exemption, some breeders who are now licensed would no longer need to be licensed. However, because APHIS has only recently begun to require licenses for breeders of small exotic or wild mammals at all, only a small number of breeders would be affected. For that small number, there will be cost savings in the amount of the annual license fee that would no longer be required.

Dogs and Cats Sold Per Year From a Premises

The regulations exempt from licensing any person who sells fewer than 25 dogs and/or cats per year for research, teaching, or testing purposes if the dogs and cats were born and raised on the person's premises. This rule will clarify that this exemption would apply

[1] There is an application fee of $10 and an annual license renewal fee that is based on the annual commissions or fees of the dealer, but not less than $30.

only if fewer than 25 dogs and/or cats are sold per year from the premises, regardless of who owns the dogs or cats. In addition to the existing requirement for dealers and research facilities to record information about an unlicensed seller, such as driver's license number and State, the rule will require the dealer or facility to obtain certification from the unlicensed seller that he/she is not required to be licensed or registered with APHIS.

These changes would potentially affect four groups of entities: (1) Persons who are currently exempt from the licensing requirements; (2) licensed Class B dealers who acquire dogs and/or cats from persons exempt from licensing; (3) the research, testing, and education industries; and (4) Class C exhibitors who acquire dogs and/or cats from persons exempt from licensing.

It is estimated that in fiscal year (FY) 2002 approximately 6,200 dogs and cats [2] used in the research, testing, and teaching industries were obtained from persons exempt from licensing. In FY 2002, there were at least 248 exempt individuals who sold dogs and/or cats to Class B dealers. These exempt persons received, on average, $50 for a dog and $25 for a cat. Based on these values, the total revenue of all exempted individuals in FY 2002 is estimated to have been $271,000. This rule will have little impact on these individuals. The required certification can be provided quickly and easily.

Class B dealers are the second group potentially affected by this rule. Nearly all dogs and cats supplied for use in the research industry by persons exempt from licensing were sold to the research industry through Class B dealers. Class B dealers obtain dogs and cats for sale to registered research facilities from pounds, Class A dealers, other Class B dealers, and persons exempt from licensing. The number of Class B dealers is limited and has been declining in recent years. We estimate that there were 18 Class B dealers supplying dogs and cats to research in 2002. In 2002, those 18 Class B dealers obtained approximately 6,200 dogs and cats from individuals who were exempt from licensing. This represents about a third of the dogs and cats Class B dealers provided to research.

The impact of this rule on Class B dealers should be small. This rule requires little added time or effort on the part of the dealer. Obtaining certification will take very little time and will be added to the information the dealer is already collecting on unlicensed sellers. Class B dealers could lose a primary source of animals due to the clarification that the exemption applies to the premises, regardless of ownership, or if Class B dealers choose to avoid collecting the required certifications. If this should occur, Class B dealers would have to turn to other sources (*i.e.*, licensed Class A dealers, pounds, or shelters) to obtain dogs and cats.

Class B dealers most likely would not acquire animals from Class A dealers because of the higher cost. Class B dealers usually pay a person exempt from licensing approximately $50 for a dog and $25 for a cat. Class A dealers, who sell directly to research facilities, charge $300 to $500 per dog and slightly less per cat. Pounds and shelters may not be able to supply Class B dealers with the number of dogs and/or cats they need to maintain their current levels of operation. Nearly all of the dogs and cats supplied by persons exempt from licensing for use in the research industry were sold to the research industry through Class B dealers.

The impact of this rule on research facilities will primarily depend on the rule's impact on Class B dealers. According to researchers, animals bred specifically for research are not suitable for all studies. Of the 92,475 dogs and cats used in research in FY 2002, about 30 percent were random source animals, with about two-thirds of those obtained from Class B dealers.[3] Laws in many areas make Class B dealers the only viable source of these animals. Any increase in costs for the dogs and cats obtained by Class B dealers would likely be passed on to the research facilities that purchase the animals.

The impact of this rule on Class C exhibitors should be very small. This rule will require that exhibitors obtain a certification from unlicensed sellers that they are not required to be licensed or registered by APHIS, a small addition to the information the exhibitors must already collect. In addition, of the more than 2,000 licensed exhibitors, we are unaware of any which obtain dogs and/or cats from unlicensed individuals.

Clarification of the Regulations and Changes to Administrative Procedures

This rule will make a number of changes to clarify the regulations and correct deficiencies we have found in enforcing the regulations. This rule will also amend a number of administrative procedures to make them more efficient. For instance, individuals applying for license renewal or change in license class will now be able to combine the license fee and application fee in a single form of payment. This rule should have little impact on licensees and should reduce APHIS' administrative burden.

Other changes, such as the additional criteria for denial of an initial license and termination of a license, make it easier to prevent individuals who are unfit to hold licenses. These changes would not have a significant economic effect on affected entities because the changes should not alter the day-to-day operations for entities that are currently in compliance with the Act.

Impact on Small Entities

The Regulatory Flexibility Act requires that we specifically consider the economic effects of this rule on small entities. As stated previously, the entities likely to be affected by this rule are Class A and B dealers, Class C exhibitors, registered exhibitors, research facilities, and individuals who are currently exempt from licensing.

We have used all available data to estimate the potential economic effects of the amendments to 9 CFR part 2 on small entities. However, some of the data we believe would be helpful in making this determination has not been available. Specifically, data are not available on the number of individuals who would be affected by the changes in exemptions from the licensing requirements. In our proposed rule, we asked the public to provide such data. However, none of the comments we received addressed this economic issue.

The Small Business Administration (SBA) has established size criteria by the North American Industry Classification System (NAICS) for determining which economic entities meet the definition of a small entity.

According to the SBA, Class A dealers (NAICS 1129, other animal production [4]) with less than $0.75 million in annual receipts are considered small. According to the 1997 Census of Agriculture, more than 99 percent [5] of

[2] Estimates are based on the following: In FY 2002 a total of 68,253 dogs and 24,222 cats from all sources were used in registered research facilities. According to the National Association for Biomedical Research, about 30 percent of these dogs and cats are ''random source''—those not bred exclusively for research. Dogs and cats supplied by exempt individuals are random source, and are supplied to research almost exclusively through Class B dealers. Class B dealers supplied approximately two-thirds of the random source dogs and cats used in research. Class B dealers supplied approximately two-thirds of the random source dogs and cats used in research. Class B dealers obtained approximately one-third of their animals from exempt sources.

[3] Foundation for Biomedical Research.

[4] Establishments primarily engaged in raising animals and insects (except cattle, hogs and pigs, poultry, sheep and goats, animal aquaculture) for sale or product production.

[5] Other animal production is combined with animal aquaculture (NAICS 1125) in the Census

farms in other animal production would be considered small. The number of unlicensed individuals who will have to become licensed because they collectively maintain more than three breeding females in the same household, or collectively sell 25 or more dogs and/or cats, is unknown. Most of these unlicensed individuals would likely be small. However, these individuals will have to take the appropriate steps to meet the exemptions listed in § 2.1 or they will have to become licensed.

Class B dealers (NAICS 422990, other miscellaneous nondurable goods merchant wholesalers) are considered to be small if the entity employs 100 or fewer persons. According to the 1997 Census of Agriculture, more than 99 percent of these entities may be considered small. This rule will merely require Class B dealers to obtain a certification statement from unlicensed sellers, which is a small additional information collection requirement.

According to the SBA, Class C and registered exhibitors (NAICS 712130, zoos and botanical gardens, and NAICS 712190, nature parks and other similar institutions) are considered to be small if the entity has receipts of less than $5 million. According to the 1997 Economic Census, about 93 percent of these entities are considered small. There are over 2,500 exhibitors licensed by or registered with APHIS. However, we are unaware of any exhibitors who obtain dogs and/or cats from unlicensed individuals. Exhibitors who would deal with unlicensed individuals for dogs and/or cats would likely be small. However, this rule should have little impact on these exhibitors.

In 2002, there were more than 1,100 active animal research facilities in the United States. The SBA standard for a small research or testing facility is one with fewer than 500 employees (NAICS 5417102, research and development in life sciences). According to the 1997 Economic Census, at least 94 percent of the facilities in this category meet the standard to be considered small. However, these facilities should be affected by this rule in only minor ways. The new requirement for a certification statement from unlicensed sellers should not affect these facilities because they do not acquire random source dogs and cats from unlicensed sources.

In conclusion, we believe that the benefits of this rule, enhanced compliance with the AWA regulations, exceed the costs. While costs for some may increase—for example, the cost of random source animals used in research could increase because they become harder to obtain—we believe that the overall costs of this rule will be relatively small. License fees are relatively low, certifications can be provided quickly and easily, and information collection is a small addition to that already being collected. In addition, other changes should not alter the day-to-day operations of entities that are currently in compliance with the regulations. The primary benefit of the rule is enhanced animal welfare in keeping with the requirements of the AWA. Another benefit is a more competitive marketplace with clearer regulatory expectations.

An alternative to this rule would be to make no change to the animal welfare regulations. After consideration, we rejected this alternative because we believe this rule is necessary to ensure compliance with the regulations and the Animal Welfare Act.

This rule contains information collection requirements, which have been approved by the Office of Management and Budget (see ''Paperwork Reduction Act'' below). The effect of these information collection requirements is expected to be minimal, with the reporting burden for requesting reinspection and for certification of exemption from licensing both estimated to be 0.083 hours per response. The total estimated number of respondents is 500 and includes applicants, dealers, exhibitors, and research facilities.

In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule.

Executive Order 12372

This program/activity is listed in the Catalogue of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0254.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Parts 1 and 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

■ Accordingly, we are amending 9 CFR parts 1 and 2 as follows:

PART 1—DEFINITION OF TERMS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. In § 1.1, the definition of *Administrator* is revised to read as follows:

§ 1.1 Definitions.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

* * * * *

PART 2—REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 4. Section 2.1 is amended as follows:

■ a. In paragraph (a)(1), the first sentence, by removing the word ''desiring'' and adding in its place the word ''intending''.

■ b. In paragraph (a)(2), the last sentence, by removing the reference to ''paragraph (d)'' and adding in its place a reference to ''paragraph (c)''.

■ c. By revising paragraphs (a)(3)(iii) and (a)(3)(iv) to read as set forth below.

■ d. By removing paragraph (b) and redesignating paragraphs (c), (d), (e), and (f) as paragraphs (b), (c), (d), and (e), respectively, and by revising newly

table covering the market value of agricultural products sold by type of farm.

redesignated paragraphs (c) and (d) to read as set forth below.

■ e. By adding, at the end of the section, the following: ''(Approved by the Office of Management and Budget under control number 0579–0254)''.

§ 2.1 Requirements and application.

(a) * * *

(3) * * *

(iii) Any person who maintains a total of three (3) or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells only the offspring of these dogs, cats, or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, nor to any person maintaining breeding female dogs, cats, and/or small exotic or wild mammals on premises on which more than three breeding female dogs, cats, and/or small exotic or wild mammals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals regardless of ownership;

(iv) Any person who sells fewer than 25 dogs and/or cats per year, which were born and raised on his or her premises, for research, teaching, or testing purposes or to any research facility and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively sells 25 or more dogs and/or cats, regardless of ownership, nor to any person acting in concert with others where they collectively sell 25 or more dogs and/or cats, regardless of ownership. The sale of any dog or cat not born and raised on the premises for research purposes requires a license;

* * * * *

(c) A license will be issued to any applicant, except as provided in §§ 2.10 and 2.11, when:

(1) The applicant has met the requirements of this section and §§ 2.2 and 2.3; and

(2) The applicant has paid the application fee of $10 and the annual license fee indicated in § 2.6 to the appropriate Animal Care regional office for an initial license, and, in the case of a license renewal, the annual license fee has been received by the appropriate Animal Care regional office on or before the expiration date of the license.

(d)(1) A licensee who wishes a renewal must submit to the appropriate Animal Care regional office a completed application form and the annual license fee indicated in § 2.6 by certified check, cashier's check, personal check, money order, or credit card. The application form and the annual license fee must be received by the appropriate Animal Care regional office on or before the expiration date of the license. An applicant whose check is returned by the bank will be charged a fee of $20 for each returned check. A returned check will be deemed nonpayment of fee and will result in the denial of the license. If an applicant's check is returned, subsequent fees must be paid by certified check, cashier's check, or money order.

(2) A license fee indicated in § 2.6 must also be paid if an applicant is applying for a changed class of license. The applicant may pay the fee by certified check, cashier's check, personal check, money order, or credit card. An applicant whose check is returned by a bank will be charged a fee of $20 for each returned check. If an applicant's check is returned, subsequent fees must be paid by certified check, cashier's check, or money order.

* * * * *

■ 5. Section 2.2 is amended as follows:

■ a. By revising paragraph (b) to read as set forth below.

■ b. By adding, at the end of the section, the following: ''(Approved by the Office of Management and Budget under control number 0579–0254)''.

§ 2.2 Acknowledgment of regulations and standards.

* * * * *

(b) *Application for license renewal.* APHIS will renew a license after the applicant certifies by signing the application form that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards. APHIS will supply a copy of the applicable regulations and standards to the applicant upon request.

■ 6. Section 2.3 is amended as follows:

■ a. By revising paragraph (b) to read as set forth below.

■ b. By adding, at the end of the section, the following: ''(Approved by the Office of Management and Budget under control number 0579–0254)''.

§ 2.3 Demonstration of compliance with standards and regulations.

* * * * *

(b) Each applicant for an initial license must be inspected by APHIS and demonstrate compliance with the regulations and standards, as required in paragraph (a) of this section, before APHIS will issue a license. If the first inspection reveals that the applicant's animals, premises, facilities, vehicles, equipment, other premises, or records do not meet the requirements of this subchapter, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. An applicant who fails the first inspection will have two additional chances to demonstrate his or her compliance with the regulations and standards through a second inspection by APHIS. The applicant must request the second inspection, and if applicable, the third inspection, within 90 days following the first inspection. If the applicant fails inspection or fails to request reinspections within the 90-day period, he or she will forfeit the application fee and cannot reapply for a license for a period of 6 months from the date of the failed third inspection or the expiration of the time to request a third inspection. Issuance of a license will be denied until the applicant demonstrates upon inspection that the animals, premises, facilities, vehicles, equipment, other premises, and records are in compliance with all regulations and standards in this subchapter.

■ 7. Section § 2.5 is amended as follows:

■ a. By revising paragraphs (a)(4) and (b) to read as set forth below.

■ b. By removing paragraph (c) and redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), respectively.

§ 2.5 Duration of license and termination of license.

(a) * * *

(4) The annual license fee has not been paid to the appropriate Animal Care regional office as required. There will not be a refund of the annual license fee if a license is terminated prior to its expiration date.

(b) Any person who is licensed must file an application for a license renewal and an annual report form (APHIS Form 7003), as required by § 2.7 of this part, and pay the required annual license fee. The required annual license fee must be received in the appropriate Animal Care regional office on or before the expiration date of the license or the license will expire and automatically terminate. Failure to comply with the annual reporting requirements or pay the required annual license fee on or before the expiration date of the license

will result in automatic termination of the license.

* * * * *

■ 8. In § 2.6, paragraphs (a) and (c) are revised to read as follows:

§ 2.6 Annual license fees.

(a) For an initial license, the applicant must submit a $10 application fee in addition to the initial license fee prescribed in this section. Licensees applying for license renewal or changed class of license must submit only the license fee prescribed in this section. The license fee for an initial license, license renewal, or changed class of license is determined from table 1 or 2 in paragraph (c) of this section. Paragraph (b) of this section indicates the method used to calculate the license fee. All initial license and changed class of license fees must be submitted to the appropriate Animal Care regional office, and, in the case of license renewals, all fees must be received by the appropriate Animal Care regional office on or before the expiration date of the license.

* * * * *

(c) The license fee shall be computed in accordance with the following tables:

TABLE 1.—DEALERS, BROKERS, AND OPERATORS OF AN AUCTION SALE—CLASS ''A'' AND ''B'' LICENSE

Over	But not over	Initial license fee	Annual or changed class of license fee
$0	$500	$30	$40
500	2,000	60	70
2,000	10,000	120	130
10,000 ...	25,000	225	235
25,000 ...	50,000	350	360
50,000 ...	100,000	475	485
100,000	.....	750	760

TABLE 2.—EXHIBITORS—CLASS ''C'' LICENSE

Number of animals	Initial license fee	Annual or changed class of license fee
1 to 5	$30	$40
6 to 25	75	85
26 to 50	175	185
51 to 500	225	235
501 and up	300	310

* * * * *

■ 9. In § 2.10, paragraph (a) is amended by adding two new sentences at the end of the paragraph to read as follows:

§ 2.10 Licensees whose licenses have been suspended or revoked.

(a) * * * No license will be renewed during the period that it is suspended. Renewal of the license may be initiated during the suspension in accordance with §§ 2.2(b) and 2.12.

* * * * *

■ 10. Section 2.11 is amended as follows:

■ a. By revising paragraphs (a)(4) and (a)(5), and by adding a new paragraph (a)(6) to read as set forth below.

■ b. By revising paragraph (b) to read as set forth below.

■ c. By adding a new paragraph (d) to read as set forth below.

§ 2.11 Denial of initial license application.

(a) * * *

(4) Has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or after 1 year if the Administrator determines that the circumstances render the applicant unfit to be licensed;

(5) Is or would be operating in violation or circumvention of any Federal, State, or local laws; or

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

(b) An applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise.

* * * * *

(d) No license will be issued under circumstances that the Administrator determines would circumvent any order suspending, revoking, terminating, or denying a license under the Act.

■ 11. A new § 2.12 is added to read as follows:

§ 2.12 Termination of a license.

A license may be terminated during the license renewal process or at any other time for any reason that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice.

■ 12. Section 2.25 is amended by adding a new paragraph (c) to read as follows:

§ 2.25 Requirements and procedures.

* * * * *

(c) No registrant or person required to be registered shall interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official who is in the course of carrying out his or her duties.

■ 13. Section 2.30 is amended by adding a new paragraph (d) to read as follows:

§ 2.30 Registration.

* * * * *

(d) No research facility shall interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official who is in the course of carrying out his or her duties.

■ 14. Section 2.35 is amended as follows:

■ a. In paragraph (b), by removing the period at the end of paragraph (b)(7) and adding in its place a semicolon, and by adding a new paragraph (b)(8) to read as set forth below.

■ b. In paragraph (b)(3), by removing the word ''state'' each time it appears and adding the word ''State'' in its place, and by adding the words ''(or photographic identification card for nondrivers issued by a State)'' after the words ''driver's license number''.

■ c. In paragraph (d)(1), by removing the words ''/VS Form 18–1'' after ''APHIS Form 7001'' and removing the words ''/VS Form 18–5'' after ''APHIS Form 7005''.

■ d. In paragraph (d)(2), by removing the words ''/VS Form 18–1'' after ''APHIS Form 7001'' and removing the words ''/VS Form 18–6'' after ''APHIS Form 7006''.

■ e. By adding, at the end of the section, the following: ''(Approved by the Office of Management and Budget under control number 0579–0254)''.

§ 2.35 Recordkeeping requirements.

* * * * *

(b) * * *

(8) If dogs or cats are acquired from any person not licensed or registered under the Act and not a pound or shelter, the research facility must obtain a certification that the animals were born and raised on the person's premises and that the person has sold fewer than 25 dogs and/or cats that year.

* * * * *

■ 15. Section 2.38 is amended as follows:

■ a. In paragraph (h)(3), by removing the words ''/VS Form 18–1'' after ''APHIS Form 7001''.

■ b. In paragraph (i)(3), by removing the words ''/VS Form 18–9'' after the words ''APHIS Form 7009''.
■ c. By revising paragraph (k)(2) to read as set forth below.

§ 2.38 Miscellaneous.

* * * * *

(k) * * *

(2) No person shall obtain live dogs or cats by use of false pretenses, misrepresentation, or deception.

* * * * *

§ 2.75 [Amended]

■ 16. Section 2.75 is amended as follows:
■ a. In paragraphs (a)(2) and (a)(2)(i), by removing the words ''/VS Form 18–5'' after ''APHIS Form 7005'' each time they appear and by removing the words ''/VS Form 18–6'' after ''APHIS Form 7006'' each time they appear.
■ b. In paragraph (a)(3), by removing the words ''/VS Form 18–1'' after ''APHIS Form 7001''.
■ c. In paragraph (b)(2) by removing the words ''/VS Form 18–19'' after ''APHIS Form 7019'' and by removing the words ''/VS Form 18–20'' after ''APHIS Form 7020''.
■ d. In paragraphs (a)(1)(iii) and (b)(1)(iii) by removing the word ''state'' each time it appears and adding the word ''State'' in its place, and by adding the phrase ''(or photographic identification card for nondrivers issued by a State)'' immediately following the words ''driver's license number''.

§ 2.76 [Amended]

■ 17. In § 2.76, paragraph (a)(4) is amended by removing the word ''state'' each time it appears and adding the word ''State'' in its place, and by adding the phrase ''(or photographic identification card for nondrivers issued by a State)'' immediately following the words ''driver's license number''.

§ 2.78 [Amended]

■ 18. In § 2.78, paragraph (d) is amended by removing the words ''/VS Form 18–1'' after ''APHIS Form 7001''.

§ 2.102 [Amended]

■ 19. In § 2.102, paragraph (a)(3) is amended by removing the words ''/VS Form 18–9'' after ''APHIS Form 7009''.

■ 20. In § 2.126, paragraph (b) is revised to read as follows:

§ 2.126 Access and inspection of records and property.

* * * * *

(b) The use of a room, table, or other facilities necessary for the proper examination of the records and inspection of the property or animals must be extended to APHIS officials by the dealer, exhibitor, intermediate handler or carrier, and a responsible adult shall be made available to accompany APHIS officials during the inspection process.

■ 21. In § 2.131, paragraphs (a), (b), (c), and (d) are redesignated as paragraphs (b), (c), (d), and (e), respectively, and a new paragraph (a) is added to read as follows:

§ 2.131 Handling of animals.

(a) All licensees who maintain wild or exotic animals must demonstrate adequate experience and knowledge of the species they maintain.

* * * * *

■ 22. Section 2.132 is amended as follows:

■ a. By revising the section heading.

■ b. By removing paragraphs (b) and (c), redesignating paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising newly redesignated paragraph (b) to read as set forth below.

■ c. In newly designated paragraph (c)(3), by removing the words ''random source''.

■ d. By adding a new paragraph (d) to read as set forth below.

■ e. By adding, at the end of the section, the following: ''(Approved by the Office of Management and Budget under control number 0579–0254)''.

§ 2.132 Procurement of dogs, cats, and other animals; dealers.

* * * * *

(b) No person shall obtain live dogs, cats, or other animals by use of false pretenses, misrepresentation, or deception.

* * * * *

(d) No dealer or exhibitor shall knowingly obtain any dog, cat, or other animal from any person who is required to be licensed but who does not hold a current, valid, and unsuspended license. No dealer or exhibitor shall knowingly obtain any dog or cat from any person who is not licensed, other than a pound or shelter, without obtaining a certification that the animals were born and raised on that person's premises and, if the animals are for research purposes, that the person has sold fewer than 25 dogs and/or cats that year, or, if the animals are for use as pets, that the person does not maintain more than three breeding female dogs and/or cats.

* * * * *

Done in Washington, DC, this 7th day of July, 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–15878 Filed 7–13–04; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1275

[Notice: 04–081]

RIN 2700–AC50

Investigation of Research Misconduct

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is issuing a final rule to implement the ''Federal Policy on Research Misconduct'' (the Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000. This rule will assist NASA in addressing allegations of research misconduct.

DATES: This rule is effective July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Mayra N. Montrose, Office of the NASA Chief Scientist, at (202) 358–1492 (voice), (202) 358–3931 (fax).

SUPPLEMENTARY INFORMATION:

Background

The objective of the Federal Policy is to create a uniform policy framework for Federal agencies for the handling of allegations of misconduct in Federally funded or supported research. Within this framework, each Federal agency funding or supporting research is expected to fashion its own regulations to accommodate the various types of research transactions in which it is engaged.

In keeping with these objectives, on July 25, 2003, we published in the **Federal Register** Vol. 18, No. 143, pg. 43982, a proposed rule creating a new research misconduct policy and a request for public comment regarding the proposed action. The NASA rule incorporates key aspects of the Federal policy, including the definition of research misconduct as fabrication, falsification or plagiarism, and the definitions of each of these sub-components; the requirements for a finding of research misconduct; and the four-stage process for determining and

resolving allegations of research misconduct; *i.e.*, inquiry, investigation, adjudication, and appeal.

NASA's research mission involves the advancement of research in the fields of aeronautics, space science, Earth science, biomedicine, biology, engineering, and physical sciences (physics and chemistry). NASA fulfills this objective through intramural research performed by NASA researchers and through extramural contracts, cooperative agreements, grants, and Space Act agreements with the private sector, and with other governmental entities. Because of this multiplicity of research arrangements, allegations of research misconduct could arise in any number of ways. In addition, the core principle of the Federal Policy is that while research institutions have the primary responsibility for the inquiry, investigation, and adjudication of allegations of research misconduct, Federal agencies have ultimate oversight authority for the research they fund or support. While there is some overlap in the actions that may be pursued by Federal agencies and research institutions, the rule is designed to provide procedures and criteria for the interaction of NASA with its research partners in dealing with the various contingencies that could arise in the processing of research misconduct allegations.

NASA shall amend 14 CFR part 1260 (Grants Handbook), 14 CFR part 1274 (Commercial agreements with cost sharing), and 48 CFR chapter 18 (NASA FAR Supplement), to reflect the implementation of this policy.

Discussion of Comments

During the public comment period on the proposed rule (14 CFR part 1275) that ended on September 23, 2003, NASA received four comments on the proposed rule from interested parties. All four comments expressed concern regarding notification to NASA of the receipt of allegations by an institution. NASA agrees with this concern and is therefore requiring notification only when an allegation leads to an investigation (§1275.103(b)). Three of the comments concerned the lack of clarity in cases where multiple institutions are involved. NASA reworded the policy to clarify that in cases of multiple institutions, a designated lead organization will be primarily responsible for the investigation. Two of the comments requested clarification on NASA's review of a completed investigation prior to undertaking its own investigation (when deemed necessary). NASA accepts the comments and has added language to §1275.102(d) for clarity.

Two of the comments requested a description of the criteria used by NASA to initiate an investigation and accept or reject an institution's report. NASA modified §1275.103(b) to clarify when NASA needs to be notified of an investigation. NASA did not include the criteria that will be used to accept or reject an institution's report because such a list may limit the Agency's option to initiate such an investigation.

One comment suggested additional language in §1275.102(f) regarding the selection and funding of institutions under investigation. NASA accepted the language. Two comments requested that institutions be informed when NASA is conducting an investigation that affects them. NASA agreed and modified §§1275.102(e) and 1275.107(c). Three of the comments concerned the lack of distinction between policies and procedures governing extramural versus intramural researchers. NASA reviewed the rule and decided that the distinction is stated in §1275.102(a) and detailed in §§1275.104 and 105. Finally, one comment requested that the degree of confidentiality specified in the document is extreme. NASA thinks the language is appropriate and in accord with existing law. Other minor edits were also accepted.

Regulatory Evaluation

This rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order.

Small Entities

As required by the Regulatory Flexibility Act (5 U.S.C. 601–612), NASA has considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. NASA certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on small business entities.

Collection of Information

This rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. NASA has analyzed this rule under that Order and has determined that it does not have implications for federalism.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Action and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure in any 1 year of $100 million or more by a State, local, and tribal government in the aggregate, or by the private sector.

NASA certifies that this regulation will not compel the expenditure in any 1 year of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, the detailed statement under section 202 of the Unfunded Mandates Reform Act is not required.

List of Subjects in 14 CFR Part 1275

Administrative practice and procedure, Grant programs, Investigations, Research, Science and technology, Scientists.

■ For the reasons discussed in the preamble, the National Aeronautics and Space Administration is amending 14 CFR chapter V by adding part 1275 to read as follows:

PART 1275—RESEARCH MISCONDUCT

Authority: Pub. L. 85–568, 72 Stat. 426, 42 U.S.C. 2473.

§ 1275.100 Purpose and scope.

(a) The purpose of this part is to establish procedures to be used by the National Aeronautics and Space Administration (NASA) for the handling of allegations of research misconduct. Specifically, the procedures contained in this part are designed to result in:

(1) Findings as to whether research misconduct by a person or institution has occurred in proposing, performing, reviewing, or reporting results from research activities funded or supported by NASA; and

(2) Recommendations on appropriate administrative actions that may be undertaken by NASA in response to research misconduct determined to have occurred.

(b) This part applies to all research wholly or partially funded or supported by NASA. This includes any research conducted by a NASA installation and any research conducted by a public or private entity receiving NASA funds or using NASA facilities, equipment or personnel, under a contract, grant, cooperative agreement, Space Act agreement, or other transaction with NASA.

(c) NASA shall make a determination of research misconduct only after careful inquiry and investigation by an awardee institution, another Federal agency, or NASA, and an adjudication conducted by NASA. NASA shall afford the accused individual or institution a chance to comment on the investigation report and a chance to appeal the decision resulting from the adjudication. In structuring procedures in individual cases, NASA may take into account procedures already followed by other entities investigating the same allegation of research misconduct. Investigation of allegations which, if true, would constitute criminal offenses, are not covered by this part.

(d) A determination that research misconduct has occurred must be accompanied by recommendations on appropriate administrative actions. However, the administrative actions themselves may be imposed only after further procedures described in applicable NASA regulations concerning contracts, cooperative agreements, grants, Space Act agreements, or other transactions, depending on the type of agreement used to fund or support the research in question. Administrative actions involving NASA civil service employees may be imposed only in compliance with all relevant Federal laws and policies.

(e) Allegations of research misconduct concerning NASA research may be transmitted to NASA in one of the following ways: by mail addressed to Office of Inspector General (OIG), Code W, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546–0001; via the NASA OIG Hotline at 1–800–424–9183, or the NASA OIG cyber hotline at *www.hq.nasa.gov/office/oig/hq/hotline.html.*

(f) To the extent permitted by law, the identity of the Complainant, witnesses, or other sources of information who wish to remain anonymous shall be kept confidential. To the extent permitted by law, NASA shall protect the research misconduct inquiry, investigation, adjudication, and appeal records maintained by NASA as exempt from mandatory disclosure under 5 U.S.C. 552, the Freedom of Information Act, as amended, and 5 U.S.C. 552a, the Privacy Act, as amended.

§ 1275.101 Definitions.

(a) *Research misconduct* means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. Research as used in this part includes all basic, applied, and demonstration research in all fields of science, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals.

(b) *Fabrication* means making up data or results and recording or reporting them.

(c) *Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(d) *Plagiarism* means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

(e) *Awardee institution* means any public or private entity or organization (including a Federal, State, or local agency) that is a party to a NASA contract, grant, cooperative agreement, Space Act agreement, or to any other transaction with NASA, whose purpose includes the conduct of research.

(f) *NASA research* means research wholly or partially funded or supported by NASA involving an awardee institution or a NASA installation. This definition includes research wholly or partially funded by NASA appropriated funds, or research involving the use of NASA facilities, equipment, or personnel.

(g) *NASA research discipline* means one of the following areas of research that together comprise NASA's research mission for aeronautics, space science, Earth science, biomedicine, biology, engineering and physical sciences (physics and chemistry).

(h) *Inquiry* means the assessment of whether an allegation of research misconduct has substance and warrants an investigation.

(i) *Investigation* means the formal development of a factual record and the examination of that record leading to recommended findings on whether research misconduct has occurred, and if the recommended findings are that such conduct has occurred, to include recommendations on appropriate administrative actions.

(j) *Complainant* is the individual bringing an allegation of research misconduct related to NASA research.

(k) *Respondent* is the individual or institution who is the subject of an allegation of research misconduct related to NASA research.

(l) *Adjudication* means the formal procedure for reviewing and evaluating the investigation report and the accompanying evidentiary record and for determining whether to accept the recommended findings and any recommendations for administrative actions resulting from the investigation.

(m) *NASA Adjudication Official* is the NASA Associate Administrator for the Enterprise with the greatest expertise in the NASA research discipline involved in the research misconduct allegation. The appendix to this part contains the list of NASA research disciplines and their associated Enterprises.

(n) *Appeal* means the formal procedure initiated at the request of the Respondent for review of a determination resulting from the adjudication and for affirming, overturning, or modifying it.

(o) *NASA Appeals Official* is the NASA Deputy Administrator or other official designated by the NASA Administrator.

§ 1275.102 OIG handling of research misconduct matters.

(a) When an allegation is made to the OIG, rather than to the awardee institution, the OIG shall determine whether the allegation concerns NASA research and whether the allegation, if true, falls within the definition of research misconduct in § 1275.101(a). Investigation of allegations which, if true, would constitute criminal offenses, are not covered by this part. If these criteria are met and the research in question is being conducted by NASA researchers, the OIG shall proceed in accordance with § 1275.104. If the research in question is being conducted at an awardee institution, another Federal agency, or is a collaboration between NASA researchers and co-investigators at either academia or industry, the OIG must refer the allegation that meets the definition of research misconduct to the entities involved and determine whether to—

(1) Defer its inquiry or investigation pending review of the results of an inquiry or investigation conducted at the awardee institution or at the Federal agency (referred to for purposes of this part as *external investigations*) determined to be the lead investigative organization for the case; or

(2) Commence its own inquiry or investigation.

(b) The OIG must inform the NASA Office of the Chief Scientist of all allegations that meet the definition of research misconduct received by the OIG and of the determinations of the OIG required by §1275.101. The NASA Office of the Chief Scientist shall notify the NASA Office of the Chief Engineer or the NASA Office of the Chief Technologist when the research is either engineering or technology research.

(c) The OIG should defer its inquiry or investigation pending review of the results of an external investigation whenever possible. Nevertheless, the OIG retains the right to proceed at any time with a NASA inquiry or investigation. Circumstances in which the OIG may elect not to defer its inquiry or investigation include, but are not limited to, the following:

(1) When the OIG determines that the awardee institution is not prepared to handle the allegation in a manner consistent with this part;

(2) When the OIG determines that NASA involvement is needed to protect the public interest, including public health and safety;

(3) When the OIG determines that the allegation involves an awardee institution of sufficiently small size that it cannot reasonably conduct the investigation itself;

(4) When the OIG determines that a NASA program or project could be jeopardized by the occurrence of research misconduct; or

(5) When the OIG determines that any of the notifications or information required to be given to the OIG by the awardee institution pursuant to § 1275.103(b) requires NASA to cease its deferral to the awardee institution's procedures and to conduct its own inquiry or investigation.

(d) A copy of the investigation report, evidentiary record, and final determination resulting from an external investigation must be transmitted to the OIG for review. The OIG shall determine whether to recommend to the NASA Adjudication Official, or to the lead investigative organization in cases that involve multiple institutions, acceptance of the investigation report and final determination in whole or in part. The OIG's decision must be made within 45 days of receipt of the investigation report and evidentiary record. This period of time may be extended by the OIG for good cause. The OIG shall make this decision based on the OIG's assessment of the completeness of the investigation report, and the OIG's assessment of whether the investigating entity followed reasonable procedures, including whether the Respondent had an adequate opportunity to comment on the investigation report and whether these comments were given due consideration. If the OIG decides to recommend acceptance of the results of the external investigation, in whole or in part, the OIG shall transmit a copy of the final determination, the investigation report, and the evidentiary record to the NASA Adjudication Official, and to the NASA Office of the Chief Scientist. When the OIG decides not to recommend acceptance, the OIG must initiate its own investigation.

(e) In the case of an investigation conducted by the OIG, the OIG shall transmit copies of the investigation report, including the Respondent's written comments (if any), the evidentiary record and its recommendations, to the institution, to the NASA Adjudication Official and to the NASA Office of the Chief Scientist.

(f) Upon learning of alleged research misconduct, the OIG shall identify potentially implicated awards or proposals and, when appropriate, shall ensure that program, grant, or contracting officers handling them are informed. Neither a suspicion nor allegation of research misconduct, nor a pending inquiry or investigation, shall normally delay review of proposals. Subject to paragraph (g) of this section, reviewers or panelists shall not be informed of allegations or of ongoing inquiries or investigations in order to avoid influencing reviews. In the event that an application receives a fundable rating or ranking by a review panel, funding can be deferred by the program until the completion of the inquiry or investigation.

(g) If, during the course of an OIG conducted inquiry or investigation, it appears that immediate administrative action, as described in § 1275.106, is necessary to protect public health or safety, Federal resources or interests, or the interests of those involved in the inquiry or investigation, the OIG shall inform the NASA sponsor for the research and the NASA Office of the Chief Scientist.

§ 1275.103 Role of awardee institutions.

(a) The awardee institutions have the primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institutions, although NASA has ultimate oversight authority for NASA research.

(b) When an allegation of research misconduct related to NASA research is made directly to the OIG and the OIG defers to the awardee institution's inquiry or investigation, or when an allegation of research misconduct related to NASA research is made directly to the awardee institution which commences an inquiry or investigation, the awardee institution is required to:

(1) Notify the OIG if an inquiry supports a formal investigation as soon as this is determined.

(2) Keep the OIG informed during such an investigation.

(3) Notify the OIG immediately—

(i) If public health or safety is at risk;

(ii) If Federal resources, reputation, or other interests need protecting;

(iii) If research activities should be suspended;

(iv) If there is reasonable indication of possible violations of civil or criminal law;

(v) If Federal action is needed to protect the interests of those involved in the investigation; or

(vi) If the research community or the public should be informed.

(4) Provide the OIG with a copy of the investigation report, including the recommendations made to the awardee

institution's adjudication official and the Respondent's written comments (if any), along with a copy of the evidentiary record.

(5) Provide the OIG with the awardee institution's final determination, including any corrective actions taken or planned.

(c) If an awardee institution wishes the OIG to defer its own inquiry or investigation, the awardee institution shall complete any inquiry and decide whether an investigation is warranted within 60 days. It should similarly complete any investigation, adjudication, or other procedure necessary to produce a final determination, within an additional 180 days. If completion of the process is delayed, but the awardee institution wishes NASA's deferral of its own procedures to continue, NASA may require submission of periodic status reports.

(d) Each awardee institution must maintain and effectively communicate to its staff, appropriate policies and procedures relating to research misconduct, including the requirements on when and how to notify NASA.

§ 1275.104 Conduct of Inquiry by the OIG.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, the OIG may defer its inquiry or investigation until it receives the results of that external investigation. When the OIG does not receive the results within a reasonable time, the OIG shall ordinarily proceed with its own investigation.

(b) When the OIG decides to initiate a NASA investigation, the OIG must give prompt written notice to the individual or institution to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. If notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) When alleged misconduct may involve a crime, the OIG shall determine whether any criminal investigation is already pending or projected. If not, the OIG shall determine whether the matter should be referred to the Department of Justice.

(d) When a criminal investigation by the Department of Justice or another Federal agency is underway or under active consideration, the OIG shall determine what information, if any, may be disclosed to the Respondent or to NASA employees.

(e) To the extent possible, the identity of sources who wish to remain anonymous shall be kept confidential. To the extent allowed by law, documents and files maintained by the OIG during the course of an inquiry or investigation of misconduct shall be treated as investigative files exempt from mandatory public disclosure upon request under the Freedom of Information Act.

(f) When the OIG proceeds with its own inquiry, it is responsible for ensuring that the inquiry is completed within 60 days after it is commenced. The OIG may extend this period of time for good cause.

(g) On the basis of what the OIG learns from an inquiry, and in consultation as appropriate with other NASA offices, the OIG shall decide whether a formal investigation is warranted.

§ 1275.105 Conduct of the OIG investigation of research misconduct.

(a) The OIG shall make every reasonable effort to complete a NASA research misconduct investigation and issue a report within 120 days after initiating the investigation. The OIG may extend this period of time for good cause.

(b) A NASA investigation may include:

(1) Review of award files, reports, and other documents readily available at NASA or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with parties or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies; and

(6) Opportunity for the Respondent to be heard.

(c) The OIG may invite outside consultants or experts to participate in a NASA investigation.

(d) During the course of the investigation, the OIG shall provide a draft of the investigation report to the Respondent, who shall be invited to submit comments. The Respondent must submit any comments within 20 days of receipt of the draft investigation report. This period of time may be extended by the OIG for good cause. Any comments submitted by the Respondent shall receive full consideration before the investigation report is made final.

(e) At the end of the investigation proceedings, an investigation report must be prepared that shall include recommended findings as to whether research misconduct has occurred. A recommended finding of research misconduct requires that:

(1) There be a significant departure from accepted practices of the relevant research community for maintaining the integrity of the research record;

(2) The research misconduct be committed intentionally, knowingly, or in reckless disregard of accepted practices; and

(3) The allegation be proven by a preponderance of evidence.

(f) The investigation report must also be transmitted with the recommendations for administrative action, when recommended findings of research misconduct are made. Section 1275.106 lists possible recommended administrative actions and considerations for use in determining appropriate recommendations.

(g) NASA OIG may elect to proceed with its administrative investigation processes in lieu of a research misconduct investigation under this part when the allegation is against a civil service employee (an intramural researcher).

§ 1275.106 Administrative actions.

(a) Listed in paragraphs (a)(1) through (a)(3) of this section are possible administrative actions that may be recommended by the investigation report and adopted by the adjudication process. They are not exhaustive, and are in addition to any administrative actions necessary to correct the research record. The administrative actions range from minimal restrictions (Group I Actions) to severe restrictions (Group III Actions), and do not include possible criminal sanctions.

(1) Group I Actions.

(i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period of time an individual, department, or institution obtain special prior approval of particular activities from NASA.

(iii) Require for a specified period of time that an institutional official other than those guilty of research misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) Group II Actions.

(i) Restrict for a specified period of time designated activities or expenditures under an active award.

(ii) Require for a specified period of time special reviews of all requests for funding from an affected individual,

department, or institution to ensure that steps have been taken to prevent repetition of the research misconduct.

(3) Group III Actions.

(i) Immediately suspend or terminate an active award.

(ii) Debar or suspend an individual, department, or institution from participation in NASA programs for a specified period of time.

(iii) Prohibit participation of an individual as a NASA reviewer, advisor, or consultant for a specified period of time.

(b) In deciding what actions are appropriate when research misconduct is found, NASA officials should consider the seriousness of the misconduct, including, but not limited to:

(i) The degree to which the misconduct was knowing, intentional, or reckless;

(ii) Whether the misconduct was an isolated event or part of a pattern;

(iii) Whether the misconduct had a significant impact on the research record, research subjects, or other researchers, institutions, or the public welfare.

§ 1275.107 Adjudication.

(a) The NASA Adjudication Official must review and evaluate the investigation report and the evidentiary record required to be transmitted pursuant to § 1275.102(d) and (e). The NASA Adjudication Official may initiate further investigations, which may include affording the Respondent another opportunity for comment, before issuing a decision regarding the case. The NASA Adjudication Official may also return the investigation report to the OIG with a request for further fact-finding or analysis.

(b) Based on a preponderance of the evidence, the NASA Adjudication Official shall issue a decision setting forth the Agency's findings as to whether research misconduct has occurred and recommending appropriate administrative actions that may be undertaken by NASA in response to research misconduct determined to have occurred. The NASA Adjudication Official shall render a decision within 30 days after receiving the investigation report and evidentiary record, or after completion of any further proceedings. The NASA Adjudication Official may extend this period of time for good cause.

(c) The decision shall be sent to the Respondent, to the Respondent's institution, and, if appropriate, to the Complainant. If the decision confirms the alleged research misconduct, it must include instructions on how to pursue an appeal to the NASA Appeals Official. The decision shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

§ 1275.108 Appeals.

(a) The Respondent may appeal the decision of the NASA Adjudication Official by notifying the NASA Appeals Official in writing of the grounds for appeal within 30 days after Respondent's receipt of the decision. If the decision is not appealed within the 30-day period, the decision becomes the final Agency action insofar as the findings are concerned.

(b) The NASA Appeals Official shall inform the Respondent of a final determination within 30 days after receiving the appeal. The NASA Appeals Official may extend this period of time for good cause. The final determination may affirm, overturn, or modify the decision of the NASA Adjudication Official and shall constitute the final Agency action insofar as the findings are concerned. The final determination shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

(c) Once final Agency action has been taken pursuant to paragraphs (a) or (b) of this section, the recommendations for administrative action shall be sent to the relevant NASA components for further proceedings in accordance with applicable laws and regulations.

Appendix to Part 1275

NASA Research Disciplines and Respective Associated Enterprises

1. Aeronautics Research—Aeronautics Enterprise
2. Space Science Research—Space Science Enterprise
3. Earth Science Research and Applications—Earth Science Enterprise
4. Biomedical Research—Biological and Physical Research Enterprise
5. Fundamental Biology—Biological and Physical Research Enterprise
6. Fundamental Physics—Biological and Physical Research Enterprise
7. Research for Exploration Systems not covered by the disciplines above—Exploration Systems Enterprise
8. Other engineering research not covered by disciplines above—NASA Chief Engineer
9. Other technology research not covered by disciplines above—NASA Chief Technologist

Dated: June 8, 2004.

Sean O'Keefe,

Administrator.

[FR Doc. 04–15432 Filed 7–13–04; 8:45 am]

BILLING CODE 7510–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (Commission) announces new ranges of comparability for storage-type water heaters, gas-fired instantaneous water heaters, and heat pump water heaters. The Commission also announces that the current ranges of comparability required by the Appliance Labeling Rule (Rule) for room air conditioners, furnaces, boilers, and pool heaters will remain in effect until further notice.

DATES: *Effective Date:* October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–2889).

SUPPLEMENTARY INFORMATION: The Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The Rule covers several categories of major household appliances and other consumer products including water heaters (this category includes storage-type water heaters, gas-fired instantaneous water heaters, and heat pump water heaters), room air conditioners, furnaces (this category includes boilers), and central air conditioners (this category includes heat pumps).

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy (DOE) to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under Section 305.10 of the Rule, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

Analysis of 2004 Data Submissions

Manufacturers have submitted data for room air conditioners, water heaters (including storage-type, gas-fired instantaneous, and heat pump water heaters), furnaces, boilers, and pool heaters. The ranges of comparability for water heaters have changed significantly this year. Accordingly, the Commission is amending the ranges in Appendices D1 through D5 of the Rule which cover storage-type water heaters (natural gas, propane, electric, and oil), gas-fired instantaneous water heaters, and heat pump water heaters. Water heater manufacturers should now base the disclosures of estimated annual operating costs required at the bottom of the EnergyGuides for these products on the 2004 Representative Average Unit Costs of Energy for electricity (8.60 cents per kiloWatt-hour), natural gas (91.0 cents per therm), propane ($1.23 per gallon), and/or heating oil ($1.28 per gallon) that were published by the Commission on April 30, 2004 (69 FR 23650).

The ranges of comparability for room air conditioners, furnaces, boilers, and pool heaters have not changed significantly enough to warrant a change to the current ranges. Therefore, the current ranges for these products will remain in effect until further notice. Manufacturers of room air conditioners must continue to use the corrected ranges for room air conditioners that were published on November 13, 1995 (60 FR 56945, at 56949). Manufacturers of room air conditioners must continue to base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for these products on the 1995 Representative Average Unit Costs of Energy for electricity (8.67 cents per kiloWatt-hour) that was published by the Commission on February 17, 1995 (60 FR 9295).

For up-to-date tables showing current range and cost information for all covered appliances, see the Commission's Appliance Labeling Rule Web page at *http://www.ftc.gov/appliances.*

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, FTC is amending 16 CFR part 305 as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT (''APPLIANCE LABELING RULE'')

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Appendices D1 through D5 to Part 305 are revised to read as follows:

APPENDIX D1 TO PART 305—WATER HEATERS—GAS

[Range information]

Capacity	Range of estimated annual energy consumption (therms/yr. and gallons/yr.)			
First hour rating	Natural gas therms/yr.		Propane gallons/yr.	
	Low	High	Low	High
Less than 21	(*)	(*)	(*)	(*)
21 to 24	(*)	(*)	(*)	(*)
25 to 29	(*)	(*)	(*)	(*)
30 to 34	(*)	(*)	(*)	(*)
35 to 40	(*)	(*)	(*)	(*)
41 to 47	(*)	(*)	(*)	(*)
48 to 55	234	254	256	278
56 to 64	246	254	269	278
65 to 74	234	258	256	283
75 to 86	230	272	256	288
87 to 99	242	272	265	288
100 to 114	230	283	252	298
115 to 131	242	312	265	309
Over 131	254	312	278	342

* No data submitted.

[2] Annual reports for room air conditioners, heat pump water heaters, storage-type water heaters, gas-fired instantaneous water heaters, furnaces, boilers, and pool heaters are due May 1.

APPENDIX D2 TO PART 305—WATER HEATERS—ELECTRIC

[Range information]

Capacity	Range of estimated annual energy consumption (KWh/yr.)	
First hour rating	Low	High
Less than 21	(*)	(*)
21 to 24	(*)	(*)
25 to 29	4721	4721
30 to 34	4721	4773
35 to 40	4671	4934
41 to 47	4671	4990
48 to 55	4622	4879
56 to 64	4622	4879
65 to 74	4671	4934
75 to 86	4622	5106
87 to 99	4773	5166
100 to 114	4825	5421
115 to 131	5106	5355
Over 131	(*)	(*)

* No data submitted.

APPENDIX D3 TO PART 305—WATER HEATERS—OIL

[Range information]

Capacity	Range of estimated annual energy consumption (gallons/yr.)	
First hour rating	Low	High
Less than 65	(*)	(*)
65 to 74	(*)	(*)
75 to 86	(*)	(*)
87 to 99	(*)	(*)
100 to 114	174	200
115 to 131	159	200
Over 131	164	212

* No data submitted.

APPENDIX D4 TO PART 305—WATER HEATERS—INSTANTANEOUS-GAS

[Range information]

Capacity	Range of estimated annual energy consumption (therms/yr. and gallons/ yr.)			
First hour rating	Natural Gas therms/yr.		Propane gallons/yr.	
	Low	High	Low	High
Under 1.00	235	235	256	256
1.00 to 2.00	230	230	252	252
2.01 to 3.00	185	220	196	239
Over 3.00	177	238	187	260

* No data submitted.

APPENDIX D5 TO PART 305—WATER HEATERS—HEAT PUMP

[Range information]

Capacity	Range of estimated annual energy consumption (KWh/Yr.)	
First hour rating	Low	High
Less than 21	(*)	(*)
21 to 24	(*)	(*)
25 to 29	(*)	(*)
30 to 34	(*)	(*)
35 to 40	(*)	(*)
41 to 47	(*)	(*)

APPENDIX D5 TO PART 305—WATER HEATERS—HEAT PUMP—Continued

[Range information]

Capacity	Range of estimated annual energy consumption (KWh/Yr.)	
First hour rating	Low	High
48 to 55	(*)	(*)
56 to 64	1830	1830
65 to 74	(*)	(*)
75 to 86	(*)	(*)
87 to 99	(*)	(*)
100 to 114	(*)	(*)
115 to 131	(*)	(*)
Over 131	(*)	(*)

* No data submitted.

Cost Information

When the above ranges of comparability in Appendices D1 through D5 are used on EnergyGuide labels for water heaters, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2004 Representative Average Unit Costs for electricity (8.60¢ per kiloWatt-hour), natural gas (91.0¢ per therm), propane ($1.23 per gallon, and heating oil ($1.28 per gallon) and the text below the box must identify the costs as such.

■ 3. Appendix L is amended by revising Prototype Label 3 and Sample Label 5 of part 305 to read as follows:

* * * * *

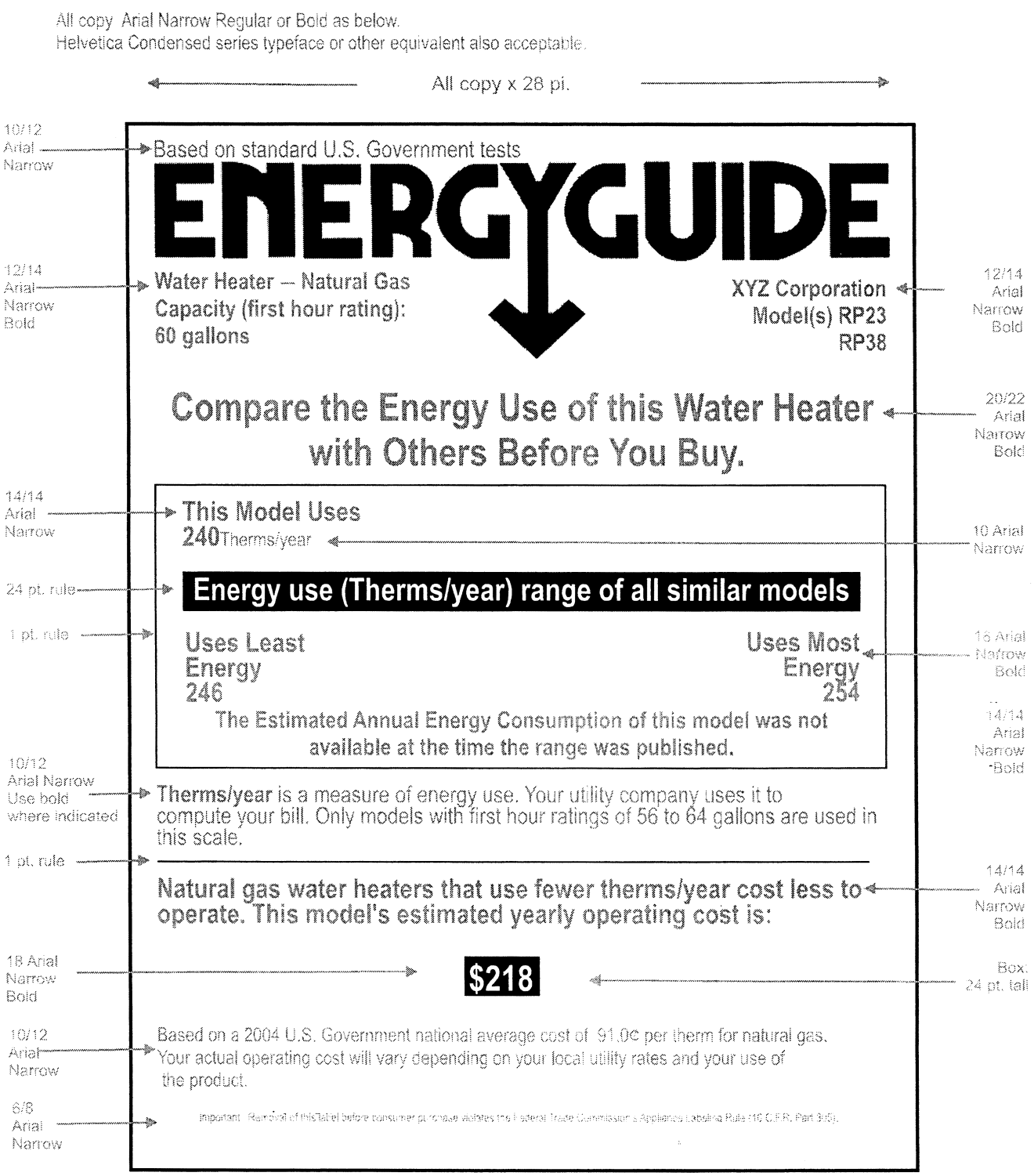
BILLING CODE 6750–01–P

* * * * *

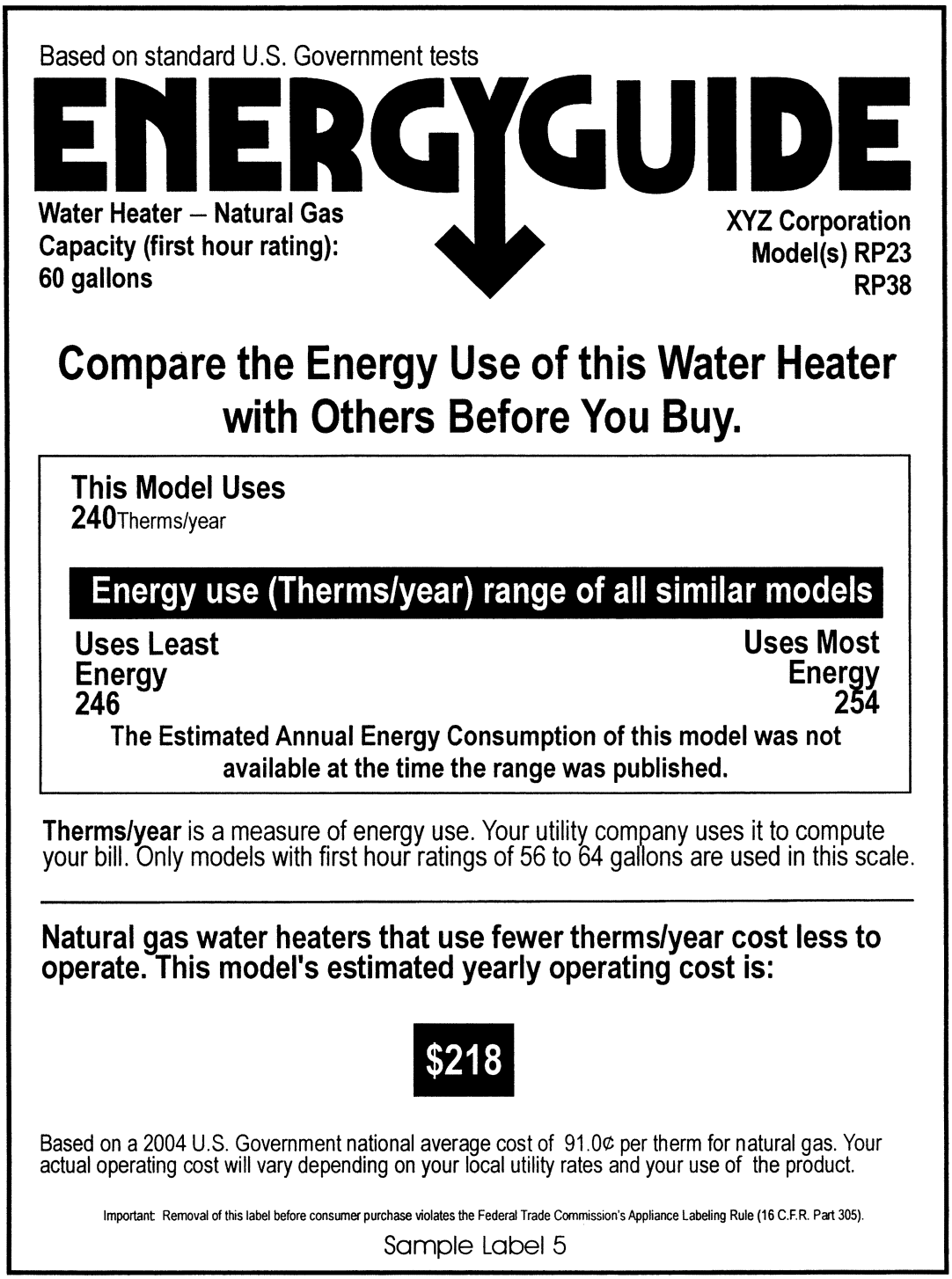
By direction of the Commission.

Donald S. Clark,

Secretary.



Prototype Label 3



Sample Label 5

[FR Doc. 04–15924 Filed 7–13–04; 8:45 am]
BILLING CODE 6750–01–C

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 3

Office of Management and Budget (OMB) Control Numbers Under the Paperwork Reduction Act

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Technical amendment; final rule.

SUMMARY: This technical amendment updates the display of Office of Management and Budget (OMB) control numbers for MSHA's standards and regulations. This display assists the public search for current information on OMB control numbers for the information collection, recordkeeping,

and reporting requirements approved by OMB under the Paperwork Reduction Act of 1995.

EFFECTIVE DATE: July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; Phone: (202) 693–9440; FAX: (202) 693–9441; E-mail: *nichols-marvin@msha.gov.*

SUPPLEMENTARY INFORMATION: We (MSHA) first consolidated our listing of OMB control numbers in a final rule published on June 29, 1995 (60 FR 33719). This action codified the OMB control numbers for our standards and regulations in one location to assist the public in quickly determining whether OMB approved a specific information collection requirement. Table 1 in 30 CFR 3.1 displays the OMB control number for each section containing a requirement for the collection, reporting, recordkeeping, or dissemination of information. This display fulfills the requirements of 44 U.S.C. 3507(f) of the Paperwork Reduction Act of 1995 (PRA 95) which prohibits an agency from engaging in a collection of information without displaying its OMB control number. Under PRA 95, a person is not required to respond to a collection of information if a valid OMB control number is not displayed.

This revision updates our current display of OMB control numbers to include new control numbers approved by OMB for regulations completed since the last update and any changes made through the renewal of previously issued OMB control numbers. There are no substantive changes or renewals made to information collection requirements by this technical amendment.

Information collection requirements go through the public review process as part of the rule to which they apply. Likewise, the renewal of an OMB control number also requires public review. As a result, because of this prior notice and opportunity for public comment, we find that there is ''good cause'' under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA) to issue this technical amendment to Table 1 in 30 CFR Part 3 without additional public notice and comment.

We also determined that there is no need to delay the effective date. The technical amendment contains no new requirements for which the public would need time, beyond that provided for in the regulation itself, to plan compliance. We find, therefore, there is ''good cause'' to except this action from the 30-day delayed effective date requirement under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act.

List of Subjects in 30 CFR Part 3

Mine safety and health, Reporting and recordkeeping requirements.

Dated: June 30, 2004.

David G. Dye,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

■ Accordingly, under the authority of 30 U.S.C. 957, chapter I of title 30, Code of Federal Regulations is amended as set forth below.

PART 3—[AMENDED]

■ 1. The authority for part 3 continues to read as follows:

Authority: 30 U.S.C. 957; 44 U.S.C. 3501–3520.

■ 2. Amend section 3.1 by revising Table 1 to read as follows:

§ 3.1 OMB control numbers.

* * * * *

TABLE 1.—OMB CONTROL NUMBERS

30 CFR citation	OMB control No.
Subchapter B—Testing, Evaluation, and Approval of Mining Products	
7.3	1219–0066
7.4	1219–0066
7.6	1219–0066
7.7	1219–0066
7.23	1219–0066
7.27	1219–0066
7.28	1219–0066
7.29	1219–0066
7.30	1219–0066
7.43	1219–0066
7.46	1219–0066
7.47	1219–0066
7.48	1219–0066
7.49	1219–0066
7.51	1219–0066
7.63	1219–0066
7.69	1219–0066
7.71	1219–0066
7.83	1219–0119
7.90	1219–0119
7.97	1219–0119
7.105	1219–0119
7.303	1219–0066
7.306	1219–0066
7.309	1219–0066
7.311	1219–0066
7.403	1219–0066
7.407	1219–0066
7.408	1219–0066
15.4	1219–0066
15.8	1219–0066
18.6	1219–0066
18.15	1219–0066
18.81	1219–0066
18.82	1219–0066
18.93	1219–0066
18.94	1219–0066
19.3	1219–0066
19.13	1219–0066
20.3	1219–0066
20.14	1219–0066
22.4	1219–0066
22.11	1219–0066
23.3	1219–0066
23.14	1219–0066
27.4	1219–0066
27.6	1219–0066
27.11	1219–0066
28.10	1219–0066
28.25	1219–0066
28.30	1219–0066
28.31	1219–0066
33.6	1219–0066
33.12	1219–0066
35.6	1219–0066
35.12	1219–0066
36.6	1219–0066
36.12	1219–0066
Subchapter G—Filing and Other Administrative Requirements	
40.3	1219–0042
40.4	1219–0042
40.5	1219–0042
41.10	1219–0042
41.11	1219–0042
41.12	1219–0042
41.20	1219–0042
43.4	1219–0014
43.7	1219–0014
44.9	1219–0065
44.10	1219–0065
44.11	1219–0065
45.3	1219–0040
45.4	1219–0040
Subchapter H—Education and Training 46.3	
46.3	1219–0131
46.5	1219–0131
46.6	1219–0131
46.7	1219–0131
46.8	1219–0131
46.9	1219–0131
46.11	1219–0131
47.31	1219–0133
47.41	1219–0133
47.51	1219–0133
47.71	1219–0133
47.73	1219–0133
48.3	1219–0009
48.9	1219–0009
48.23	1219–0009
48.29	1219–0009
49.2	1219–0078
49.3	1219–0078
49.4	1219–0078
49.6	1219–0078
49.7	1219–0078
49.8	1219–0078
49.9	1219–0078
Subchapter I—Accidents, Injuries, Illnesses, Employment, and Production in Mines	
50.10	1219–0007
50.11	1219–0007

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control No.
50.20	1219–0007
50.30	1219–0007
Subchapter K—Metal and Nonmetal Mine Safety and Health	
56.1000	1219–0042
56.3203(a)	1219–0121
56.5005	1219–0048
56.13015	1219–0089
56.13030	1219–0089
56.14100	1219–0089
56.18002	1219–0089
56.19022	1219–0034
56.19023	1219–0034
56.19057	1219–0049
56.19121	1219–0034
56.19132	1219–0034
57.1000	1219–0042
57.3203(a)	1219–0121
57.3461	1219–0097
57.5005	1219–0048
57.5037	1219–0003
57.5040	1219–0003
57.5047	1219–0039
57.5060	1219–0135
57.5066	1219–0135
57.5070	1219–0135
57.5071	1219–0135
57.5075	1219–0135
57.8520	1219–0016
57.8525	1219–0016
57.11053	1219–0046
57.13015	1219–0089
57.13030	1219–0089
57.14100	1219–0089
57.18002	1219–0089
57.19022	1219–0034
57.19023	1219–0034
57.19057	1219–0049
57.19121	1219–0034
57.19132	1219–0034
57.22004(c)	1219–0103
57.22204	1219–0030
57.22229	1219–0103
57.22230	1219–0103
57.22231	1219–0103
57.22239	1219–0103
57.22401	1219–0096
57.22606	1219–0095
Subchapter M—Uniform Mine Health Regulations	
62.110	1219–0120
62.130	1219–0120
62.170	1219–0120
62.171	1219–0120
62.172	1219–0120
62.173	1219–0120
62.174	1219–0120
62.175	1219–0120
62.180	1219–0120
62.190	1219–0120
Subchapter O—Coal Mine Safety and Health	
70.201(c)	1219–0011
70.202	1219–0011
70.204	1219–0011
70.209	1219–0011
70.220	1219–0011
71.201(c)	1219–0011
71.202	1219–0011
71.204	1219–0011
71.209	1219–0011
71.220	1219–0011
71.300	1219–0011
71.301	1219–0011
71.403	1219–0024
71.404	1219–0024
72.503	1219–0124
72.510	1219–0124
72.520	1219–0124
75.100	1219–0127
75.153(a)(2)	1219–0001
75.155	1219–0127
75.159	1219–0127
75.160	1219–0127
75.161	1219–0127
75.204(a)	1219–0121
75.215	1219–0004
75.220	1219–0004
75.221	1219–0004
75.223	1219–0004
75.310	1219–0088
75.312	1219–0088
75.342	1219–0088
75.351	1219–0088, –0116
75.360	1219–0088, –0044
75.361	1219–0088
75.362	1219–0088
75.363	1219–0088, –0119
75.364	1219–0088
75.370	1219–0088
75.371	1219–0088, –0119
75.372	1219–0073
75.373	1219–0073
75.382	1219–0088
75.512	1219–0116
75.703–3(d)(11)	1219–0116
75.800–4	1219–0116
75.820(b), (e)	1210–0116
75.821	1219–0116
75.900–4	1219–0116
75.1001–1(c)	1219–0116
75.1100–3	1219–0054
75.1101–23	1219–0054
75.1103–8	1219–0054
75.1103–11	1219–0054
75.1200	1219–0073
75.1200–1	1219–0073
75.1201	1219–0073
75.1202	1219–0073
75.1202–1	1219–0073
75.1203	1219–0073
75.1204	1219–0073
75.1204–1	1219–0073
75.1321	1219–0025
75.1327	1219–0025
75.1400–2	1219–0034
75.1400–4	1219–0034
75.1432	1219–0034
75.1433	1219–0034
75.1501	1219–0054
75.1502	1219–0054
75.1702	1219–0041
75.1712–4	1219–0024
75.1712–5	1219–0024
75.1713–1	1219–0078
75.1714–3(e)	1219–0044
75.1716	1219–0020
75.1716–1	1219–0020
75.1716–3	1219–0020
75.1721	1219–0073
75.1901	1219–0119
75.1904(b)(4)(i)	1219–0119
75.1911	1219–0119
75.1912	1219–0119
75.1914	1219–0119
75.1915	1219–0119, -0124
77.100	1219–0127
77.103(a)(2)	1219–0001
77.105	1219–0127
77.106	1219–0127
77.107	1219–0127
77.107–1	1219–0127
77.215	1219–0015
77.215–2	1219–0015
77.215–3	1219–0015
77.215–4	1219–0015
77.216–2	1219–0015
77.216–3	1219–0015
77.216–4	1219–0015
77.216–5	1219–0015
77.502	1219–0116
77.800–2	1219–0116
77.900–2	1219–0116
77.1000	1219–0026
77.1000–1	1219–0026
77.1101	1219–0051
77.1200	1219–0073
77.1201	1219–0073
77.1202	1219–0073
77.1404	1219–0034
77.1432	1219–0034
77.1433	1219–0034
77.1702	1219–0078
77.1713	1219–0083
77.1900	1219–0019
77.1901	1219–0082
77.1906	1219–0034
77.1909–1	1219–0025
90.201(c)	1219–0011
90.202	1219–0011
90.204	1219–0011
90.209	1219–0011
90.220	1219–0011
90.300	1219–0011
90.301	1219–0011

[FR Doc. 04–15843 Filed 7–13–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 260

[DoD Directive 1125.3]

Vending Facility Program for the Blind on Federal Property

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes information in Title 32 of the Code of

Federal Regulations concerning Vending Facility Program for the Blind on Federal Property. This part has served the purpose for which it was intended in the CFR and is no longer necessary.

DATES: *Effective Date:* July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. G. McNamara (703) 602–4601.

SUPPLEMENTARY INFORMATION: The corresponding Department of Defense document, DoD Directive 1125.3 is available at *http://www.dtic.mil/whs/directives/corres/pdf/d11253wchl_040778/d11253p.pdf.*

List of Subjects in 32 CFR Part 260

Blind, Concessions, Federal buildings and facilities.

PART 260—[REMOVED]

■ Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 260 is removed.

Dated: July 7, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–15861 Filed 7–13–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD–13–04–033]

RIN 1625–AA87

Security Zone Regulations; Elliot Bay and Lake Washington, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones around the M/V ARGOSY VIRGINIA 5, M/V ARGOSY CELEBRATIONS AND P/C OLYMPUS while underway, anchored, or moored on Lake Washington, Washington. In addition, the Coast Guard is establishing temporary security zones around Pier 70 and Amgen located on Elliott Bay and the National Oceanographic and Atmospheric Administration (NOAA) Sandpoint Facility and Gates Residence located on Lake Washington. Entry into these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives. The Coast Guard is establishing these temporary security zones around these waterways and these vessels to provide safety and security during the National Governors Association (NGA) Conference. The Captain of the Port, Puget Sound, Washington is taking this action to safeguard the dignitaries, official parties, VIP's and other participants (''attendees'') attending the NGA Conference from terrorism, sabotage, or other subversive acts. Entry into these zones is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 11 a.m on July 17, through 2 a.m. on July 19 2004, unless sooner cancelled by the Captain of the Port.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG T.D. Thayer, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6230.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest. It is also in the public interest to have these regulations effective less than 30 days after publication. This rule is needed to provide for the security of the public, the NGA Conference and the conference attendees, and the safety of the waterways due to the potential for hostile and violent acts including from demonstrators protesting the NGA Conference. This Temporary Final Rule is necessary for the Coast Guard as well as other Federal, State and Local law enforcement officials to put appropriate security measures in place in time for the start of the NGA Conference. If normal notice and comment procedures were followed, national security could be compromised.

Background and Purpose

The Coast Guard is establishing temporary security zone regulations to safeguard designated vessels carrying NGA Conference attendees and the venue areas established for the attendees from potential terrorism, sabotage, or other subversive acts. These temporary security zones will mitigate these potential threats and are necessary to protect the public, conference attendees, law enforcement officers, maritime transportation infrastructure and the flow of commerce on these waterways. Representatives of the Captain of the Port Puget Sound, Washington will enforce these security zones. The Captain of the Port may be assisted by other federal, state and local agencies.

Discussion of Rule

This Temporary Final Rule establishes moving security zones around certain vessels that will be used to transport conference attendees. This Temporary Final Rule also establishes security zones in the navigable waters of the United States around four different venues located on Elliott Bay and Lake Washington. These security zones will control vessel movements in and around these zones and they are necessary to safeguard the NGA Conference attendees from terrorism, sabotage, or other subversive acts. The security zones established by this Temporary Final Rule are as follows: (1) All waters of Lake Washington, Washington State, within a 200 yard radius centered on the M/V ARGOSY VIRGINIA 5, M/V ARGOSY CELEBRATIONS AND P/C OLYMPUS while these vessels are underway, anchored, or moored; (2) all waters of Elliott Bay, Washington, within a 200 yard radius centered on 47°37.6′ N, 122°22.5′ W, near the Amgen facility, which is located between Pier 90/91 and the grain terminal; (3) all waters of Elliott Bay, Washington , within a 200 yard radius centered on 47°36.88′ N, 122°21.45′ W, which is the approximate location of the end of Pier 70; (4) all waters of Lake Washington, Washington State, within a 200 yard radius centered on 47°41.3′ N, 122°15.8′ W, which is the location of National Oceanographic and Atmospheric Administration's Sandpoint Facility; and (5) all waters of Lake Washington, Washington State, south of the Highway 520 floating bridge, which are enclosed by following points: 47°37′758″ N, 122°14′554″ W; 47°37′758″ N, 122°14′680″ W; 47°37′572″ N, 122°14′610″ W; 47°37′575″ N, 122°14′679″ W [Datum: NAD 1983]. Entry into these security zones is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that this rule will be in effect for a short period of time.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit portions of Elliott Bay and Lake Washington. The security zone will not have a significant economic impact on a substantial number of small entities because of the limited areas these security zones cover and the short duration in time that they will be enforced. Because the impacts of this rule are so minimal, the Coast Guard certifies under 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. We have determined that these security zones and fishing rights protection need not be incompatible. We have also determined that this Temporary Final Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Temporary Final Rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A temporary § 165.T13–011 is added to read as follows:

§ 165.T13–011 Security Zone; Elliot Bay and Lake Washington, WA.

(a) *Security Zones.* The following are security zones:

(1) *M/V ARGOSY VIRGINIA 5, M/V ARGOSY CELEBRATIONS and P/C OLYMPUS Security Zones:* All waters of Lake Washington, Washington State, within a 200 yard radius centered on the M/V ARGOSY VIRGINIA 5, M/V ARGOSY CELEBRATIONS AND P/C OLYMPUS while underway, anchored, or moored. The security zone around these vessels will be enforced from 11 a.m. on July 17, 2004, until 2 a.m. on July 18, 2004.

(2) *Amgen Security Zone:* All waters of Elliott Bay, Washington, within a 200 yard radius centered on 47°37.6′ N, 122°22.5′ W [Datum: NAD 1983]. The security zone around the Amgen facility will be enforced from 11 a.m. on July 18, 2004, until 2 a.m. on July 19, 2004.

(3) *Pier 70 Security Zone:* All waters of Elliott Bay, Washington, within a 200 yard radius centered on 47°36.88′ N, 122°21.45′ W [Datum: NAD 1983]. The security zone around Pier 70 will be enforced from 11 a.m. on July 17, 2004, until 2 a.m. on July 18, 2004.

(4) *National Oceanographic and Atmospheric Administration (NOAA) Sandpoint Facility Security Zone:* All waters of Lake Washington, Washington State, within a 200 yard radius centered on 47°41.3′ N, 122°15.8′ W [Datum: NAD 1983]. The security zone around the NOAA Sandpoint facility will be enforced from 11 a.m. on July 17, 2004, until 2 a.m. on July 18, 2004.

(5) *Gates Residence Security Zone:* All waters of Lake Washington, Washington State, south of the Highway 520 floating bridge, which are enclosed by following points: 47°37′758″ N, 122°14′554″ W; 47°37′758″ N, 122°14′680″ W; 47°37′572″ N, 122°14′610″ W; 47°37′575″ N, 122°14′679″ W [Datum: NAD 1983]. The Gates residence security zone will be enforced from 11 a.m. on July 17, 2004, until 2 a.m. on July 18, 2004.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart D, this section applies to any person or vessel in the navigable waters of the United States. No person or vessel may enter or remain in the above security zone, unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the security zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

(c) *Effective period.* This section is effective from 11 a.m. on July 17, 2004, until 2 a.m. on July 19, 2004, unless sooner cancelled by the Captain of the Port.

Dated: July 8, 2004.

D. Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 04–15959 Filed 7–9–04; 2:46 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 62

[OAR–2004–0007; FRL–7786–8]

RIN 2060–AM11

Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed on or Before September 20, 1994 and Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: We are amending the large municipal waste combustor (MWC) emission guidelines to add a carbon monoxide (CO) emission limit for one type of MWC technology that was not previously addressed. When the large MWC emission guidelines were developed, all existing MWC units using the fluidized bed, mixed fuel (wood/refuse-derived fuel) technology were judged to be small MWC units, *i.e.*, having a design combustion capacity of 35 to 250 tons per day (tpd) of municipal solid waste (MSW). Two existing MWC units have since been determined to be large MWC units, *i.e.*, having a design combustion capacity greater than 250 tpd MSW, and thus subject to the large MWC emission guidelines. The direct final rule amends the emission guidelines to add a CO emission limit specific to this technology. The direct final rule also amends the large MWC Federal plan, which implements the emission guidelines. The CO emission limit being added of 200 parts per million (ppm) by dry volume (24-hour geometric mean) for fluidized bed, mixed fuel (wood/refuse-derived fuel) type MWC unit is the same CO limit used for this technology in the emission guidelines for small MWC units. Low CO levels indicate good combustion, and thus, good control of other pollutants. Good combustion combined with air pollution control devices significantly reduces the release of air pollutants to the environment.

DATES: The direct final rule is effective September 13, 2004, unless significant material adverse comments are received by August 13, 2004. If we receive significant material adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2004–0007. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Stevenson, Combustion Group, Emission Standards Division (C439–01), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5264, e-mail *stevenson.walt@epa.gov.*

SUPPLEMENTARY INFORMATION: A companion proposal to the direct final rule is being published in today's **Federal Register** and is identical to the

direct final rule. Any comments on the amendments should address the proposal. If significant material adverse comments are received by the date specified in the proposed amendments, the direct final rule will be withdrawn and the comments on the proposed amendments will be addressed by EPA in a subsequent final rule. If no significant material adverse comments are received on any provision of the direct final rule, then no further action will be taken on the companion proposal and the amendments will become effective September 13, 2004.

Regulated Entities. Categories and entities potentially regulated by the direct final rule are existing MWC units with a design combustion capacity of greater than 250 tpd of MSW. The MWC emission guidelines and the MWC Federal plan affect the following categories of sources:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry, Federal government, and State/local/tribal governments.	562213, 92411	4953, 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal solid waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal solid waste) and do not recover energy from the waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the direct final rule. To determine whether your facility is regulated by the direct final rule, you should examine the applicability criteria in § 60.32b of subpart Cb, and § 62.14102 of subpart FFF. If you have any questions regarding the applicability of the direct final rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The docket number for the amendment to the emission guidelines (40 CFR part 60, subpart Cb) and Federal plan (40 CFR part 62, subpart FFF) is OAR–2004–0007. Other dockets incorporated by reference include Docket ID Nos. A–89–08, A–90–45, and A–98–18 for the emission guidelines amendment and Docket ID Nos. A–97–45 and A–2000–39 for the Federal plan amendment. The docket includes background information and supported the proposal and promulgation of the emission guidelines (40 CFR part 60, subparts Ca and Ea) and large MWC Federal plan (40 CFR part 62, subpart FFF).

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the promulgated direct final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN Help line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by the final rule amendments is available on the filing of petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of the direct final rule. Under section 307(b)(2) of the CAA, the requirements that are subject to today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements. Under section 307(d)(7) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment or public hearing may be raised for judicial review.

Outline. The information presented in this preamble is organize as follows:

I. Background

The direct final rule amends the MWC emission guidelines and the MWC Federal plan for large MWC units to add a CO emission limit for bubbling fluidized bed combustors that burn a mixture of wood and refuse-derived fuel (RDF). This is the same combustor technology and CO emission limit that appear in the small MWC emission guidelines. In developing the emission guidelines for small MWC units, we recognized the unique characteristics of the existing bubbling fluidized bed MWC units combusting a mixture of wood and RDF and included a CO emission limit specific to that technology. Since promulgation of the emission guidelines for large MWC units, two existing fluidized bed MWC units combusting a mixture of wood and RDF were determined to be large MWC units, subject to the large MWC emission guidelines. However, the large MWC emission guidelines did not include bubbling fluidized bed MWC units combusting a mixture of wood and RDF because none were judged to be in the large category when the large MWC emission guidelines were developed and adopted in 1995. The direct final rule amendments recognize bubbling fluidized bed (wood/RDF) MWC units as an MWC technology in the large MWC category and add a CO emission limit of 200 ppm by dry volume (24-hour geometric mean). This is the same CO emission limit, and is based on the same analysis for this technology, that appears in the small MWC emission guidelines. The direct final rule amendments similarly revise the large MWC Federal plan, which implements the emission guidelines.

II. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have determined that the direct final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and, therefore, is not subject to review by OMB because the final rule will not have an annual effect on the economy of $100 million or more and does not impose any additional control requirements above the 1995 emission guidelines. We considered the 1995 emission guidelines to be ''significant,'' and OMB reviewed them in 1995 (see 60 FR 65405, December 19, 1995).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The amendment contained in the direct final rule results in no changes to the information collection requirements of the standards or guidelines and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the emission guidelines and Federal plan. Therefore, the information collection requests have not been revised. The Office of Management and Budget has previously approved the information collection requirements contained in the existing emission guidelines (40 CFR part 60, subpart Cb) and the Federal plan (40 CFR part 62, subpart FFF) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the rules were promulgated on December 1995 and November 1998, respectively. The Office of Management and Budget assigned OMB control number 2060–0210 (EPA ICR 1506.07) to the emission guidelines and OMB control number 2060–0390 (EPA ICR 1847.01) to the Federal plan.

Copies of the ICR document(s) may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small government organizations, and small government jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as follows: (1) A small business in the regulated industry that has a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Section 605 of the RFA requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. During the 1995 MWC rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards and, therefore, a regulatory flexibility analysis was not required (see 60 FR 65413).

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus,

the final rule is not subject to the requirements of section 202 and 205 of the UMRA. In addition, we have determined that the direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small governments. Therefore, the direct final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, we may not issue a regulation that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. Also, we may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

The direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The direct final rule will not impose substantial direct compliance costs on State or local governments, it will not preempt State law. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires us to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The direct final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the direct final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives we considered.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health and safety risks. Also, the direct final rule is not ''economically significant.''

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

The direct final rule is not subject to Executive Order 13211 (66 FR 43255, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d)(15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The direct final rule does not involve technical standards. Therefore, the requirements of the NTTAA do not apply.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. We will submit a report containing the direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The direct final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 60 and 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 8, 2004.

Michael O. Leavitt,

Administrator.

■ For reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Cb—[Amended]

■ 2. Amend § 60.34b by revising Table 3—Municipal Waste Combustor Operating Guidelines to read as follows:

§ 60.34b Emission guidelines for municipal waste combustor operating practices.

* * * * *

TABLE 3.—MUNICIPAL WASTE COMBUSTOR OPERATING GUIDELINES

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) [a]	Averaging time (hrs) [b]
Mass burn waterwall	100	4
Mass burn refractory	100	4
Mass burn rotary refractory	100	24
Mass burn rotary waterwall	250	24
Modular starved air	50	4
Modular excess air	50	4
Refuse-derived fuel stoker	200	24
Fluidized bed, mixed fuel (wood/refuse-derived fuel)	200	[c] 24
Bubbling fluidized bed combustor	100	4
Circulating fluidized bed combustor	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor	150	4
Spreader stoker coal/refuse-derived fuel mixes fuel-fired combustor	200	24

[a] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.
[b] Averaging times are 4-hour or 24-hour block averages.
[c] 24-hour block average, geometric mean.

* * * * *

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Amend subpart FFF by revising Table 3 to read as follows:

Subpart FFF—[AMENDED]

* * * * *

TABLE 3 OF SUBPART FFF OF PART 62.—MUNICIPAL WASTE COMBUSTOR OPERATING REQUIREMENTS

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) [a]	Averaging time (hrs) [b]
Mass burn waterwall	100	4
Mass burn refractory	100	4
Mass burn rotary refractory	100	24
Mass burn rotary waterwall	250	24
Modular starved air	50	4
Modular excess air	50	4
Refuse-derived fuel stoker	200	24
Fluidized bed, mixed fuel (wood/refuse-derived fuel)	200	[c] 24
Bubbling fluidized bed combustor	100	4
Circulating fluidized bed combustor	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor	150	4
Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor	200	24

[a] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.
[b] Averaging times are 4-hour or 24-hour block averages.
[c] 24-hour block average, geometric mean.

* * * * *

[FR Doc. 04–15942 Filed 7–13–04; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 070904A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 11, 2004, through 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC specified for Pacific ocean perch in the Central Aleutian District of the BSAI is 2,706 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC for Pacific ocean perch in the Central Aleutian District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,100 mt, and is setting aside the remaining 606 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the directed fishery for Pacific ocean perch in the Central Aleutian District of the BSAI.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 9, 2004.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–15960 Filed 7–9–04; 2:46 pm]
BILLING CODE 3510–22–S

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 62

[OAR–2004–0007; FRL–7786–7]

RIN 2060–AM11

Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That Are Constructed on or Before September 20, 1994, and Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: We are proposing to amend the large municipal waste combustor (MWC) emission guidelines to add a carbon monoxide (CO) emission limit for one type of MWC technology that was not previously addressed. When the large MWC emission guidelines were developed, all existing MWC units using the fluidized bed, mixed fuel (wood/refuse-derived fuel) technology were judged to be small MWC units, *i.e.*, having a design combustion capacity of 35 to 250 tons per day (tpd) of municipal solid waste (MSW). Two existing MWC units have since been determined to be large MWC units, *i.e.*, having a design combustion capacity of 250 or more tpd MSW, and thus subject to the large MWC emission guidelines. The proposed rule would amend the emission guidelines to add a CO emission limit specific to this technology. The proposed rule also would amend the large MWC Federal plan, which implements the emission guidelines. The CO emission limit being added of 200 parts per million (ppm) by dry volume (24-hour geometric mean) for fluidized bed, mixed fuel (wood/refuse-derived fuel) type MWC unit is the same CO limit used for this technology in the emission guidelines for small MWC units. Low CO levels indicate good combustion, and thus good control of other pollutants. Good combustion combined with air pollution control devices significantly reduces the release of air pollutants to the environment.

In the Rule and Regulations section of today's **Federal Register**, we are taking direct final action on the proposed amendments because we view the revisions as noncontroversial, and we anticipate no significant adverse comments. We have explained our reasons for the amendments in the preamble to the direct final rule. If we receive no significant adverse comments, we will take no further action on the proposed rule. If we receive significant adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and address comments in a subsequent **Federal Register** action based on the proposal.

DATES: *Comments.* Submit comments on or before August 13, 2004.

Public Hearing. If anyone contacts us by August 3, 2004, requesting to speak at a public hearing, we will hold a public hearing on August 13, 2004. Persons interested in attending the public hearing should contact Ms. Kelly Hayes at (919) 541–5578 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0007, by one of the following methods:

Federal eRulemaking Portal. http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Agency Web site. http://www.epa.gov/edocket. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

By Mail. Send your comments to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2004–0007. Please include a total of two copies. The EPA requests a separate copy also be sent to the contact person identified below (*see* **FOR FURTHER INFORMATION CONTACT**).

By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room B108, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0007. Such deliveries are accepted only during the normal hours of operation as identified above. Special arrangements should be made for deliveries of boxed information.

By Facsimile. Fax your comments to (202) 566–1741, Attention Docket ID No. OAR–2004–0007.

Instructions: Direct your comments to Docket ID No. OAR–2004–0007. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing. If a public hearing is held, it will be held at EPA's RTP Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby.

Docket. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Stevenson, Combustion Group, Emission Standards Division (C439–01), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5264, e-mail *stevenson.walt@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by the proposed rule are existing MWC units with a design combustion capacity of greater than 250 tpd of MSW. The MWC emission guidelines and the MWC Federal plan affect the following categories of sources:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry, Federal government, and State/local/tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal solid waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal solid waste) and do not recover energy from the waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rule. To determine whether your facility is regulated by the proposed rule, you should examine the applicability criteria in § 60.32b of 40 CFR part 60, subpart Cb, and § 62.14102 of 40 CFR part 62, subpart FFF. If you have any questions regarding the applicability of the proposed rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit information that you consider to be CBI electronically through EDocket, regulations.gov, or e-mail. Send or deliver information identified as CBI to only the following address: Mr. Walt Stevenson, c/o OAQPS Document Control Officer (Room C439–01), U.S. EPA, Research Triangle Park, 27711, Attention Docket ID No. OAR–2004–0007. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Docket. The docket number for the proposed amendment to the emission guidelines (40 CFR part 60, subpart Cb) and Federal plan (40 CFR part 62, subpart FFF) is Docket ID No. OAR–2004–0007. Other dockets incorporated by reference include Docket ID Nos. A–89–08, A–90–45, and A–98–18 for the emission guidelines amendment and Docket ID Nos. A–97–45 and A–2000–39 for the Federal plan amendment. The docket includes background information and supported the proposal and promulgation of the emission guidelines (40 CFR part 60, subparts Ca and Ea) and large MWC Federal plan (40 CFR part 62, subpart FFF).

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the promulgated direct final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN Help line at (919) 541–5384.

I. Background and Summary of Amendments

The proposed rule amends the MWC emission guidelines and the MWC Federal plan for large MWC units to add a CO emission limit for bubbling fluidized bed combustors that burn a mixture of wood and refuse-derived fuel (RDF). This is the same combustor technology and CO emission limit that appear in the small MWC emission guidelines. In developing the emission guidelines for small MWC units, we recognized the unique characteristics of the existing bubbling fluidized bed MWC units combusting a mixture of wood and RDF and included a CO emission limit specific to that technology. Since promulgation of the emission guidelines for large MWC units, two existing fluidized bed MWC units combusting a mixture of wood and RDF were determined to be large MWC units, subject to the large MWC emission guidelines. However, the large MWC emission guidelines did not include bubbling fluidized bed MWC units combusting a mixture of wood and RDF because none were judged to be in the large category when the large MWC emission guidelines were developed and adopted in 1995. The proposed amendments recognize bubbling fluidized bed (wood/RDF) MWC units as an MWC technology in the large MWC category and add a CO emission limit of 200 ppm by dry volume (24-hour geometric mean). This is the same CO emission limit, and is based on the same analysis for this technology, that appears in the small MWC emission guidelines. The proposed amendments similarly revise the large MWC Federal plan, which implements the emission guidelines.

II. Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements of the proposed rule, see the direct final rule in the Rules and Regulations section of today's **Federal Register**.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as amended by the Small business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small

businesses, small government organizations, and small government jurisdictions.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as follows:

(1) A small business in the regulated industry that has a gross annual revenue less than $6 million;

(2) A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or

(3) A small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Section 605 of the RFA requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. During the 1995 MWC rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards and, therefore, a regulatory flexibility analysis was not required (*see* 60 FR 65413).

After considering the economic impacts of today's proposed rule on small entities, I certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

List of Subjects in 40 CFR Parts 60 and 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 8, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–15943 Filed 7–13–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 04–208; DA 04–1820]

National Association of State Utility Consumer Advocates' (NASUCA) Petition for Declaratory Ruling Regarding Truth-in-Billing

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau grants a limited extension of the deadline for filing reply comments in CG Docket 04–208 on or before August 13, 2004, seeking comment on the NASUCA petition for declaratory ruling regarding truth-in-billing and billing formats for both wireline and wireless telecommunication carriers.

DATES: Comments are due on or before July 14, 2004, and reply comments are due on or before August 13, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken or Kelli Farmer of the Consumer & Governmental Affairs Bureau at (202) 418–2512.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* DA 04–1820, adopted June 23, 2004, and released June 24, 2004. When filing comments, please reference CG Docket No. 04–208. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before July 14, 2004, and reply comments on or before August 13, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/efile/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554. Parties who choose to file comments by paper should also submit their comments on diskette. These diskettes should be submitted to Kelli Farmer, Consumer & Governmental Affairs Bureau, Policy Division, 445 12th Street, SW., Rm 4–C734, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CG Docket No 04–208), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''disk copy-not an original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. Copies of this document are available through the Commission's copy contractor Best Copy and Printing Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may also contact BCPI at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160.

To request materials in accessible formats for people with disabilities

(Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This Order can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy/truthinbill.html.*

Synopsis

On May 25, 2004, the Commission released a *Public Notice* seeking comment on the National Association of State Utility Consumer Advocates' (NASUCA) petition for declaratory ruling regarding truth-in-billing and billing formats for both wireline and wireless telecommunications carriers. *See* Petition for Declaratory Ruling, CC Docket No. 98–170, filed March 30, 2004. The *Public Notice* stated that interested parties could file comments within 30 and 45 days respectively, after its publication in the **Federal Register**. *See* National Association of State Utility Consumer Advocates (NASUCA) Petition for Declaratory Ruling Regarding Truth-in-Billing and Billing Format, CG Docket No. 04–208, *Public Notice*, 69 FR 33021, June 14, 2004. The *Public Notice* was published in the **Federal Register** on June 14, 2004, making comments due on or before July 14, 2004, and reply comments on or before July 29, 2004. *Id.* On June 11, 2004, the NASUCA filed a motion to extend the deadline for filing reply comments in this proceeding. *See* NASUCA Motion for Extension of Time, CG Docket No. 04–208 (filed June 11, 2004). In its pleading NASUCA requests an extension of time to file reply comments stating that ''[i]n light of the important legal, economic and policy issues raised in NASUCA's petition and the volume of comments that are likely to be filed in response to that petition, the 15-day period allowed for in the *Public Notice* is simply not adequate to permit NASUCA and others to provide the Commission with a full reply joining the issues.'' *Id.* at 2. NASUCA goes on to suggest that ''a brief, 15-day extension will greatly facilitate the development of a complete record for the Commission's review.'' *Id.* at 2. It is the policy of the Commission that extensions of time are not routinely granted. *See* 47 CFR 1.46(a). In this instance, however, the Bureau finds that NASUCA has shown good cause for an extension of the deadline for filing reply comments in this proceeding. Because of the complexity of the issues involved and the high number of comments expected to be filed, we grant a limited extension so that parties may file reply comments in this docket on or before August 13, 2004.

Accordingly, *it is so ordered*, pursuant to the authority delegated under section 0.141 of the Commission's rules, 47 CFR 0.141, that NASUCA's Motion for Extension of Time in the above-captioned proceeding *is granted* to the extent set forth herein.

Federal Communications Commission.

Thomas D. Wyatt,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 04–16088 Filed 7–13–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2004–18039]

NHTSA's Four-Year Plan for Hydrogen, Fuel Cell and Alternative Fuel Vehicle Safety Research

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the availability of a planning document that describes the scope and timeline of NHTSA's proposed research program addressing safety and fuel economy assessment of hydrogen-powered fuel cell and internal combustion engine vehicles.

Ensuring that hydrogen internal combustion engine (ICE) and fuel cell powered vehicles provide a level of safety comparable to that of other vehicles currently in use in the United States requires a substantial research effort. Hydrogen-powered vehicles will utilize many advanced and unique technologies that have not been tested in the transportation environment. Very little data are available concerning the safe performance of these vehicles because so few exist; they are typically prototypes handled by specially trained personnel. Many manufacturers, however, are substantially investing in producing and marketing these vehicles in the near future. As these vehicles are deployed into the fleet, the safety of hydrogen as a fuel and the safety of alternative fuel vehicles in crashes becomes an important issue for public safety. A failure to adequately address safety concerns in the earliest stages of development could have a negative impact on the deployment of this new technology.

Corollary efforts by NHTSA that are covered in the plan address fuel economy and international harmonization of global technical regulations for hydrogen vehicles. The agency will analyze the potential increases in the fleet fuel economy. NHTSA will also work with its international counterparts to determine the content of regulations pertaining to fuel cell and ICE hydrogen vehicles.

NHTSA seeks public review and comment on the planning document. Comments received will be evaluated and incorporated, as appropriate, into planned agency activities.

DATES: Comments should be submitted early enough to ensure that Docket Management receives them not later than October 12, 2004.

ADDRESSES: Interested persons may obtain a copy of the research plan by downloading the document from the Document Management System (DMS), U.S. Department of Transportation, at the address provided below, or from NHTSA's Web site at *http://www-nrd.nhtsa.dot.gov/departments/nrd-11/H2-4yr-plan.html.* Alternatively, interested persons may obtain a copy of the document by contacting the agency official(s) listed in the section titled, ''For Further Information Contact,'' immediately below. You may submit your comments (identified by DOT DMS Docket Number NHTSA–2004–18039) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: (202) 493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590:

For Technical Issues

Barbara C. Hennessey, Office of Applied Vehicle Safety Research, NVS–320, telephone (202) 366–4714, e-mail *Barbara.Hennessey@nhtsa.dot.gov.*

Submission of Comments

How Do I Prepare and Submit Comments?

Interested persons are invited to submit comments in response to this request. We request that commenters provide all relevant factual information to support their conclusions or opinions, including statistical data and estimated cost and benefits, and the source of such information.

Comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this notice.

Comments must not be more than 15 pages long. (49 CFR 553.21). This limit was established to encourage comments written in a concise fashion. However, additional documents may be attached to your comments.

There is no limit on the length of the attachments.

Please submit two copies of comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, mail a self-addressed, stamped postcard to Docket Management. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, 400 7th St., SW., Washington, DC 20590. In addition, you should submit two copies of your comments, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are 9 a.m. to 5 p.m., Monday to Friday, except Federal holidays. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
- On that page, click on ''search.''
- On the next page (*http://dms.dot.gov/search/*), type in the five-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–2001–12345,'' you would type ''12345.'' After typing the docket number, click on ''search.''
- On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Since some people may submit late comments, we recommend that you periodically check the Docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: July 6, 2004.

Joseph N. Kanianthra,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 04–15971 Filed 7–13–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AT40

2004–2005 Refuge-Specific Hunting and Sport Fishing Regulations; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction to proposed regulations.

SUMMARY: This document contains corrections to the proposed regulations which were published June 30, 2004 (69 FR 39552). The proposed regulations related to the addition of 10 refuges and wetland management districts to the list of areas open for hunting and/or sport fishing programs and increase the activities available at 7 other refuges. We also develop pertinent refuge-specific regulations for those activities and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2004–2005 season.

FOR FURTHER INFORMATION CONTACT: Leslie Marler, (703) 358–2397.

DATES: We must receive your comments on or before July 30, 2004.

SUPPLEMENTARY INFORMATION:

Background

We issue refuge-specific regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, season, bag or creel limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. The regulations that are the subject of these corrections increase opportunity to hunt migratory game birds at two refuges in the State of Tennessee.

Need for Correction

We provided information in the **SUPPLEMENTARY INFORMATION** section indicating that two refuges (Cross Creeks and Tennessee National Wildlife Refuges) in the State of Tennessee were opening to migratory game bird hunting for the first time but the amendatory text under § 32.62 for those two refuges incorrectly reflected that migratory bird hunting was reserved.

Correction of Publication

Accordingly, the publication on June 30, 2004, of the proposed regulations is corrected as follows:

§ 32.62 [Corrected]

1. The listing for Cross Creeks National Wildlife Refuge on page 39661 in the first column in § 32.62, under A. Migratory Game Bird Hunting [Reserved], is corrected as follows:

Cross Creeks National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of Canada geese (September season only) on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.

2. You must possess and carry a valid refuge permit while hunting on the refuge.

3. We set and publish season dates and bag limits annually in the refuge Public Use Regulations available at the refuge office.

4. We prohibit hunting within 50 yards (45 m) of any building, public use road, or boat launching ramp.

5. We allow hunters access to the refuge from 1½ hours before legal sunrise to 1½ hours after legal sunset.

6. We prohibit the use of motorized off-road vehicles (*e.g.*, ATVs) on the refuge.

7. We prohibit the use of horses or other animal conveyances on refuge hunts.

8. Youth hunters under age 16 must remain in sight and normal voice contact with an adult hunter age 21 or older. One adult hunter may supervise no more than two youth hunters.

9. We allow the use of dogs to retrieve geese.

10. You may use only portable blinds, and you must remove all boats, blinds, and decoys from the refuge at the end of each day.

* * * * *

2. The listing for Tennessee National Wildlife Refuge on page 39662 in the third column in § 32.62, under A. Migratory Game Bird Hunting [Reserved], is corrected as follows:

Tennessee National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of Canada geese (September season only) on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.

2. We require a refuge hunt permit for all hunters age 16 and older. We charge a fee for all hunt permits. You must possess and carry a valid refuge permit while hunting on the refuge.

3. We set and publish season dates and bag limits annually in the refuge Public Use Regulations available at the refuge office.

4. We prohibit hunting within 50 yards (45 m) of any building, public use road, or boat launching ramp.

5. We allow access for goose hunting on the refuge 1½ hours before legal sunrise until 1½ hours after legal sunset.

6. We prohibit the use of motorized off-road vehicles (*e.g.*, ATVs) on the refuge.

7. We prohibit the use of horses or other animal conveyances on refuge hunts.

8. Youth hunters under age 16 must remain in sight and normal voice contact with adult hunters age 21 or older. One adult hunter may supervise no more than two youth hunters.

9. We allow the use of dogs to retrieve geese.

10. You may use only portable blinds, and you must remove all boats, blinds, and decoys from the refuge at the end of each day.

* * * * *

Dated: July 8, 2004.

Sara Prigan,

Service Federal Register Liaison.

[FR Doc. 04–15860 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 070704F]

RIN 0648–AR77

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to the Annual Harvest Specifications Process for the Groundfish Fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 48 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and Amendment 48 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) (Amendments 48/48). If approved, Amendments 48/48 would revise the administrative process used to establish annual harvest specifications for the groundfish fisheries of the GOA and the BSAI and would update the FMPs by revising the description of the groundfish fisheries and participants, revising the name of the BSAI FMP, revising text to simplify wording and correct typographical errors, and revising the description of the Council's Groundfish Plan Teams' responsibilities. This action is necessary to manage fisheries based on the best scientific information available, to provide for adequate prior public review and comment to the Secretary of Commerce (Secretary) on Council recommendations, to provide for additional opportunity for Secretarial review, to minimize unnecessary disruption to fisheries and public confusion, and to promote administrative efficiency. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMPs, and other applicable laws.

DATES: Comments on Amendments 48/48 must be submitted by September 13, 2004.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- E-mail to *4848NOA@noaa.gov* and include in the subject line of the e-mail comments the document identifier: 48–48 NOA. E-mail comments, with or without attachments, are limited to 5 megabytes;
- FAX to 907–586–7557; or
- Webform at the Federal eRulemaking Portal: www.regulations.gov. Follow the instructions at that site for submitting comments.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendments 48/48 and the amendments may be obtained from the same mailing address above or from the

NMFS Alaska Region website at *www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment.

Harvest Specifications Process Revision

Amendments 48/48 were unanimously recommended by the Council in October 2003. If approved by NMFS, these amendments would revise the administrative process used to establish annual harvest specifications for the groundfish fisheries of the BSAI and GOA. Harvest specifications establish specific limits on the commercial harvest of groundfish and are used to manage the groundfish fisheries. Harvest specifications include total allowable catch (TAC), acceptable biological catch (ABC), overfishing levels, and prohibited species catch (PSC) amounts, and apportionments thereof, which have been recommended by the Council. Currently, the regulations provide for annual harvest specifications that are effective January 1 through December 31. The goals in revising the harvest specifications process are to: (1) manage fisheries based on the best scientific information available, (2) provide for adequate prior public review and comment to the Secretary on Council recommendations, (3) provide for additional opportunity for Secretarial review, (4) minimize unnecessary disruption to fisheries and public confusion, and (5) promote administrative efficiency.

The current harvest specifications process requires publication of proposed, interim, and final rulemaking. Each October, the Council recommends proposed harvest specifications to NMFS which are reviewed and published in the **Federal Register** for public comment in December. In November, new biological information regarding the groundfish target species becomes available and is used to develop the Council's final harvest specifications recommendations for the fishing year starting in January. The Council makes its final harvest specifications recommendations to NMFS in December. NMFS reviews the Council's recommended final harvest specifications and publishes the final specifications in the **Federal Register** in February or March of the following year.

Starting in January of the new fishing year, groundfish fisheries are managed using interim harvest specifications, pending publication of the final harvest specifications. These interim harvest specifications remain in place until superseded by final harvest specifications in February or March each year. The interim harvest specifications are required by § 679.20(c)(2) to be 25 percent or the first seasonal apportionment of the proposed TAC amounts for most groundfish target species and 25 percent of the proposed PSC amounts.

A number of statutory requirements must be met by NMFS to implement annual harvest specifications. Section 553(c) of the Administrative Procedure Act (APA) requires prior public review and comment on a proposed rule, including review and comment on the information used as the basis for the proposed rule, unless the prior opportunity for public review is waived pursuant to section 553(b)(3)(B) of the APA. National standard 2 in section 301(a)(2) of the Magnuson-Stevens Act requires the management of the groundfish fisheries to be based on the best scientific information available. Each year in October, proposed harvest specifications for the following year are developed based on either TAC amounts used in the current year for some species or on projections from the Stock Assessment and Fishery Evaluation (SAFE) reports written the previous year. The SAFE reports written in the previous year often are the best scientific information available in October for supporting the harvest specifications for the following year. The new SAFE reports completed in November are used by the Council to recommend final harvest specifications in mid-December, usually after publication in the **Federal Register** of the proposed harvest specifications.

The proposed and final specifications process normally requires 6 months to complete, yet only 2 weeks exist between the time the new final SAFE reports are available (mid-December) and the start of the fishing year on January 1. The Council's Groundfish Plan Teams develop the SAFE reports in November for the following fishing year based on the summer survey data and new analysis. These November SAFE reports are reviewed and approved by the Council in December and used as the scientific basis for its recommended harvest specifications. Because of this time constraint, the proposed harvest specifications are completed before the new information supporting the final harvest specifications is available. The proposed harvest specifications and supporting information available for public review and comment can differ from the final harvest specifications and their supporting information.

For some species, the harvest specifications change little among years, such as TAC amounts for certain long-lived target groundfish species in the GOA. For other species, harvest specifications can change greatly between the proposed and final harvest specifications for various reasons. In some cases, adjustments are made based on the new information developed in the November SAFE reports. In the BSAI, the need to maximize the harvest of a particular groundfish species can cause changes between proposed and final TACs for a number of groundfish species to maintain the overall harvest at or below the 2 million optimal yield specified at § 679.20(a)(1)(i). Because the proposed harvest specifications and supporting information can differ from the final harvest specifications and information on which they are based, the current specifications process raises concerns that it may not provide adequate opportunity for prior public review and comment on the annual harvest specifications or on the supporting information used for the annual harvest specifications.

The use of interim specifications in the current specifications process also is problematic. Prior public review and comment on the interim specifications has been routinely waived for ''good cause'' pursuant to section 553(b)(B) of the APA. However, this practice raises serious questions of compliance with the APA's notice and comment requirements. See *Natural Resources Defense Council* v. *Evans*, 316 F.3d 904 (9th Cir. 2003). In addition, the interim harvest specifications also may provide inadequate harvest and PSC amounts for those fisheries that are prosecuted in the early part of the year (i.e., rock sole).

Amendments 48/48 would provide a process that allows for adequate prior public review and comment on the harvest specifications and supporting information and would allow the groundfish fisheries to be managed based on the best available scientific information. Each year in October, the Council would recommend to NMFS proposed harvest specifications that would be effective for up to 2 years. The rationale for harvest specifications that would be effective for up to 2 years is explained later in this document.

In consideration of the current stock assessment survey schedules, regulatory

procedures, and quality of stock assessment information for the BSAI and GOA target species, the proposed harvest specifications process would authorize specifications that would be effective for up to 24 months. NMFS would review the recommendations and publish proposed harvest specifications in November or early December, including detailed descriptions of what the final harvest specifications are likely to be and the new information anticipated to support them. In November, the new SAFE reports would be forwarded to the Council by the Council's Groundfish Plan Teams. The Council would consider the new SAFE reports, public comments on the proposed harvest specifications, and public testimony and then develop recommendations for the final harvest specifications in December. NMFS would review those recommendations and public comment on the proposed harvest specifications, and specifically determine if the final harvest specifications are a logical outgrowth of the proposed harvest specifications. If the final harvest specifications recommendations are consistent with applicable law and are a logical outgrowth of the proposed harvest specifications, the final harvest specifications may be published without additional public review and comment.

If the final harvest specifications recommendations are not a logical outgrowth of the proposed harvest specifications, an additional publication of proposed harvest specifications may be needed to provide an additional opportunity for prior public review and comment under the APA. In May or June of the following year, the final harvest specifications would be published based on the additional proposed harvest specifications and after consideration of public comment. Alternatively, depending upon the circumstances, NMFS may find ''good cause'' to waive the additional publication of proposed harvest specifications for prior public review and comment. In this case, the final harvest specifications likely would become effective in March.

To provide opportunity for an additional public comment period after the Council's final harvest specifications recommendation in December, the groundfish fisheries in the new fishing year would be managed on the specifications that had been published previously. These harvest specifications would be superseded by the new harvest specifications. This proposed specifications process would eliminate the need for the interim harvest specifications. Having harvest specifications effective into the second fishing year would allow time for NMFS to complete an additional public review and comment period, if needed, while preventing disruption of the fisheries.

To provide consistency between the groundfish FMPs for the harvest specifications process and to provide flexibility during the harvest specifications process, Amendments 48/48 would allow specifications to be effective for up to 2 fishing years. The stock assessment models used for determining the harvest specifications would use 2-year projections for biomass and acceptable biological catch. The frequency of fishery resource surveys also affects whether specifications should be done on a more or less frequent basis. Allowing specifications to be effective for up to 2 years would fit well with the frequency of stock projections that must be used for the harvest specifications, and would provide the Council and NMFS the flexibility to adjust the specifications time periods in response to potential changes in the frequency of stock assessment surveys or other stock assessment data or administrative issues.

The Council recommended that harvest specifications for the hook-and-line gear and pot gear sablefish individual fishing quota (IFQ) fisheries be limited to the succeeding fishing year to ensure those fisheries are conducted concurrent with the halibut IFQ fishery. Having the sablefish IFQ fisheries concurrent with the halibut IFQ fishery would reduce the potential for discards of halibut and sablefish in these fisheries. The sablefish IFQ fisheries would remain closed at the beginning of each fishing year, until the final harvest specifications for the sablefish IFQ fisheries are in effect. The trawl sablefish fishery would be managed using harvest specifications for up to 2 years with the remaining target species in the BSAI and with GOA pollock, Pacific cod, and the ''other species'' complex.

Housekeeping Revisions to the FMPs

Amendment 48 to the BSAI FMP would revise the title of the FMP. The GOA FMP title is a more concise description of the document compared to the title used for the BSAI FMP. Definitions at 50 CFR 679.2 describe the BSAI as the ''Bering Sea and Aleutian Islands management area.'' Consistency between the names of the groundfish FMPs and with the groundfish fishery regulations would reduce confusion for users of the documents. The BSAI FMP title would be revised to ''The Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.'' Catch histories and the socioeconomic and community descriptions also would be updated with more recent information. References supporting the descriptions would be added to the reference section of the FMP.

The GOA and BSAI FMPs contain references related to the management of foreign vessels and foreign processors in the groundfish fisheries. Foreign participation in the groundfish fisheries in the Exclusive Economic Zone off Alaska ended in 1990. Amendments 48/48 would revise the text throughout the FMPs to revise references to the management of foreign fishing vessels and foreign processors.

The description in the FMPs of the responsibilities of the Council's Groundfish Plan Teams would be revised with this action. The current FMPs require the Plan Teams to provide preliminary SAFE reports annually for the September Council meeting and to include PSC apportionments and allocations recommendations and economic analysis. The Council meeting was moved to October, and preliminary SAFEs are no longer developed by the Plan Teams. No information is available to the Plan Teams to allow recommendations of PSC apportionments and allocations. This information is usually available at the October and December Council meetings. No economists are on the Plan Teams, so an economic analysis cannot be produced by the Plan Teams for the October Council meeting. The amendments would revise the FMPs to limit the Plan Teams' responsibilities for the annual October Council meeting to providing the most recent information regarding proposed ABC amounts and overfishing levels to the Council. The amendments also would revise the FMP so that the Council may request the Plan Teams to recommend PSC allocations and apportionments among target fisheries and gear types and an economic analysis on the affects of such allocations. This revision would provide flexibility in the future, if the Plan Teams were to include an economist.

The information regarding skates in the GOA FMP would be updated with this action. In 2003, a directed fishery for skates developed in the GOA, targeting big and longnose skate species. The current FMP language does not list big and longnose skate species in the description of skates, and describes the harvest of skates as bycatch only. This action would update the fishery information regarding skates to identify species taken and the methods of

harvest of skates. Amendment 63 to the GOA FMP, approved by the Secretary on February 27, 2004, moved skates from the ''other species'' category to the target species category. Amendment 63 allows for the management of the skate directed fishery, and the Amendment 48 revision would provide a more accurate description of the skate fishery. Additional information on Amendment 63 is in the preamble to the proposed rule for Amendment 63 published in the **Federal Register** on January 6, 2004 (69 FR 614).

Amendments 48/48 also would revise the text in the GOA and BSAI FMPs to correct typographical errors and to clarify wording.

Public comments are being solicited on proposed Amendments 48/48 through the end of the comment period (see **DATES**). A proposed rule that would implement the amendments will be published in the **Federal Register** for public comment at a later date. Public comments on the proposed rule must be received by the end of the comment period on the amendments in order to be considered in the approval/disapproval decision on the amendments. All comments received by the end of the comment period on the amendments, whether specifically directed to the amendments or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendments. To be considered, comments must be received—not just postmarked or otherwise transmitted—by close of business on the last day of the comment period.

Dated: July 8, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–15974 Filed 7–13–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 134
Wednesday, July 14, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–4202–09; I.D. 070804C]

Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2005; Addendum Additional Programs

AGENCY: Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: NOAA publishes this notice to amend the agency's solicitation for applications published on June 30, 2004, in an action entitled ''Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2005.'' In this notice, NOAA adds five programs that are making funds available for financial assistance awards. Interested applicants should consult the June 30, 2004, notice for all of the other requirements for submitting an application.

DATES: Proposals must be received by the date and time indicated under each program listing in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Proposals must be submitted to the addresses listed in the **SUPPLEMENTARY INFORMATION** section for each program. The FR notices may be found on the NOAA website at *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML*. The e-mail for Grants.gov is *http:www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: For a copy of the prior published Omnibus **Federal Register** Notice, the full funding opportunity announcement and/or application, please access it via Grants.Gov at *http://www.grants.gov* or contact the person listed as the information contact under each program.

SUPPLEMENTARY INFORMATION: In this notice, NOAA adds five programs that are making funds available for financial assistance awards. Interested applicants should consult the June 30, 2004 (69 FR 39417) notice for all of the other requirements for submitting an application. This omnibus notice describes funding opportunities for the following NOAA discretionary grant programs:

NOAA Project Competitions

National Marine Fisheries Service

1. Marine Fisheries Initiative (MARFIN), Research and Development Projects in the Gulf of Mexico and off the U.S. South Atlantic Coastal States
2. Cooperative Research Program, Research and Development Projects in the Gulf of Mexico and off the U.S. South Atlantic Coastal States

Oceanic and Atmospheric Research

National Sea Grant College Program

1. Ballast Water Technology Demonstration Program
2. National Strategic Investment in Aquatic Invasive Species Research and Outreach

National Weather Service

IFLOWS–Integrated Flood Observing and Warning System (IFLOWS) Program

NOAA Project Competitions

National Marine Fisheries Service

1. Marine Fisheries Initiative (MARFIN), Research and Development Projects in the Gulf of Mexico and off the U.S. South Atlantic Coastal States

Summary Description: The NMFS Southeast Regional Office is inviting the public to submit research and development projects that will optimize the use of fisheries in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia, and Florida involving the U.S. fishing industry (recreational and commercial), including fishery biology, resource assessment, socioeconomic assessment, management and conservation, selected harvesting methods, and fish handling and processing. Proposals may be selected for funding for up to three years through a cooperative agreement.

Funding Availability: Approximately $2.5 million may be available in fiscal year (FY) 2005 for projects. This amount includes possible in-house projects. The NMFS Southeast Regional Office anticipates that typical project awards will range from $30,000 to $300,000. The average award is $78,950.

Statutory Authority: We are soliciting applications for Federal assistance pursuant to 15 U.S.C. 713c–3(d).

CFDA: 11.433 Marine Fisheries Initiative.

Application Deadline: We must receive your application by close of business (5 p.m. eastern daylight time) on August 30, 2004. Applications will be date stamped to show date and time received. Applications received after that time will not be considered for funding.

Address for Submitting Proposals: You can obtain an application package from, and send your completed application(s) to: National Marine Fisheries Service, State/Federal Liaison office, 9721 Executive Center Drive N., St. Petersburg, FL 33702. You may also obtain the application package from the MARFIN Home Page at: *http://caldera.sero.nmfs.gov/grants/programs/marfin.htm*

Information Contact(s):Ellie Francisco Roche, Chief, State/Federal Liaison Office at (727) 570–5324.

Eligibility: Eligible applicants include: Institutions of higher education, other nonprofits, commercial organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of this solicitation since the objective of the MARFIN program is to optimize research and development benefits from U.S. marine fishery resources.

Cost Sharing Requirements: Cost-sharing is not required.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. Cooperative Research Program, Research and Development Projects in the Gulf of Mexico and off the U.S. South Atlantic Coastal States

Summary Description: The NMFS Southeast Regional Office is inviting the public to submit research and development projects that seek to increase and improve the working relationship between researchers from

the NMFS, state fishery agencies, universities, and fishermen. The program is a means of involving commercial and recreational fishermen in the collection of fundamental fisheries information. Collection efforts support the development and evaluation of management and regulatory options. Projects accepted for funding will need to be completed within 24 months.

Funding Availability: Approximately $2.0 million may be available in fiscal year (FY) 2005 for projects. The NMFS Southeast Regional Office anticipates that typical project awards will range from $45,000 to $480,000. The average award is $190,000.

Statutory Authority: We are soliciting applications for Federal assistance pursuant to 15 U.S.C. 713c–3(d).

CFDA: 11.454 Unallied Management Projects.

Application Deadline: We must receive your application by close of business (5 p.m. eastern daylight time) on September 13, 2004. Applications will be date stamped to show date and time received. Applications received after that time will not be considered for funding.

Address for Submitting Proposals: You can obtain an application package from, and send your completed application(s) to: National Marine Fisheries Service, State/Federal Liaison office, 9721 Executive Center Drive N., St. Petersburg, FL 33702. You may also obtain the application package from the CRP homepage at: *http://caldera.sero.nmfs.gov/grants/programs/crp.htm*.

Information Contact(s):Ellie Francisco Roche, Chief, State/Federal Liaison Office at (727) 570–5324.

Eligibility: Eligible applicants include: Institutions of higher education, other nonprofits, commercial organizations, state, local and Indian tribal governments and individuals. Federal agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of this solicitation since the objective of the CRP is to optimize research and development benefits from U.S. marine fishery resources.

Applicants who are not commercial or recreational fisherman must have commercial or recreational fishermen participating in their project. There must be a written agreement with a fisherman describing the involvement in the project activity.

Cost Sharing Requirements: Cost-sharing is not required.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Oceanic and Atmospheric Research

National Sea Grant College Program

1. Ballast Water Technology Demonstration Program

Summary Description: NOAA, the U.S. Fish and Wildlife Service, and the U.S. Maritime Administration expect to entertain proposals to conduct ballast water treatment technology testing and demonstration projects. The Ballast Water Technology Demonstration Program supports projects to develop, test, and demonstrate technologies that treat ships' ballast water in order to reduce the threat of introduction of aquatic invasive species to U.S. waters through the discharge of ballast water.

Funding Availability: Depending on 2005 appropriations, NOAA and the U.S. Fish and Wildlife Service expect to make available up to about $2 million in FY 2005, and the U.S. Maritime Administration expects to make available several vessels for use as test platforms, support ballast water treatment technology demonstration projects. The maximum amount of award will vary with the scale of the proposed project. If $2 million is made available, approximately 8 grants with a median value of about $200,000 are anticipated to be awarded.

Statutory Authority: Statutory authority for this program is provided under 16 U.S.C. 4701 *et seq.*; 33 U.S.C. 1121–1131; 46 U.S.C. App 1211 (2000); 50 U.S.C. App 1744 (2000).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support; 15.FFA Fish and Wildlife Management Assistance.

Application Deadline: Pre-proposals must be received by the National Sea Grant Office by 4 p.m. EDT on August 27, 2004, and by 4 p.m. EST on November 16, 2004 for full proposals.

Addresses for Submitting Proposals: Pre-proposals and full proposals must be submitted to the National Sea Grant Office, Attn: Mrs. Geraldine Taylor, SG-Ballast Water, 1315 East-West Highway, R/SG, Rm 11732, Silver Spring, MD 20910. Telephone number for express mail applications is 301–713–2445.

Information Contact(s): Dorn Carlson, NOAA National Sea Grant Office, 301–713–2435; via internet at Dorn.Carlson@noaa.gov; or Pamela Thibodeaux, U.S. Fish and Wildlife Service, 703–358–2493; via internet at Pamela__Thibodeaux@fws.gov; or Deborah Aheron, U.S. Maritime Administration, 202–366–8887; via internet at Deborah.Aheron@marad.dot.gov. Further information can be obtained from the above information contacts, or on the Ballast Water Program website, *http://www.nsgo.seagrant.org/research/nonindigenous/ballast*.

Eligibility: Individuals, institutions of higher education, nonprofit organizations, commercial organizations, Federal, State, local and Indian tribal governments, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are eligible. Only those who submit pre-proposals by the deadline are eligible to submit full proposals.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. National Strategic Investment in Aquatic Invasive Species Research and Outreach

Summary Description: The National Sea Grant College Program seeks to fund research and outreach projects addressing the introduction and spread of aquatic invasive species. The goal of the program is to discover and develop information and tools that can lead to the prevention, monitoring and control of aquatic invasive species threatening United States coastal, oceanic and Great Lakes communities, resources and ecosystems. Appropriate areas of research may include: biology and life history research, population dynamics, genetics, physiology, behavior, and parasites and diseases of nonindigenous species, ecological and environmental tolerances of nonindigenous species, impacts of invasive species at each stage of their life history on the environment, resources, and human health, research into invasive species control measures (engineering, physical, chemical, biological, physicochemical, administrative, and educational), and economic impact analysis of invasive species on marine and coastal resources, sport, commercial and tribal fisheries, the recreation and tourism industry, the shipping and navigation industry, and municipal and industrial water users. Other appropriate areas of endeavor may include: use of research results to provide a scientific basis for developing sound policy and environmental law, public education and technology transfer, research and outreach into identifying vectors of ANS introduction, and education and outreach activities that will transfer this information to the appropriate users.

Funding Availability: Depending on the overall funding appropriation for the

National Sea Grant College Program, about $3,900,000 is anticipated to be available to support invasive species research projects, and about $1,700,000 to support invasive species outreach projects, in FY 2005 and FY 2006. Funding will be limited to $150,000 per year for a maximum of two years' duration.

Statutory Authority: Statutory authority for this program is provided under 33 U.S.C. 1121–1131.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Pre-proposals must be received by a state Sea Grant Program (or by the National Sea Grant Office in the case of an applicant in a non-Sea Grant state) by 4 p.m. (local time) on August 27, 2004, and by 4 p.m. (local time) on November 16, 2004 for full proposals. State Sea Grant Programs are to forward all proposals received by the above deadlines to the National Sea Grant Office by 4 p.m. EDT on September 2, 2004 and full-proposals by 4 p.m. EST November 23, 2004.

Addresses for Submitting Proposals: Pre-proposals and full proposals from Sea Grant states must be submitted to the state Sea Grant Program. The addresses of the state Sea Grant Programs may be found at *http://www.nsgo.seagrant.org/SGDirectors.html*. Pre-proposals and full proposals from non-Sea Grant states may be submitted either to the nearest state Sea Grant Program or directly to the National Sea Grant Office, Attn: Mrs. Geraldine Taylor, SG-Invasive Species, 1315 East-West Highway, R/SG, Rm 11732, Silver Spring, MD 20910. Telephone number for express mail applications is 301–713–2445.

Information Contact(s): Dorn Carlson, NOAA National Sea Grant Office, 301–713–2435; via internet at *Dorn.Carlson@noaa.gov*.

Eligibility: Individuals, institutions of higher education, nonprofit organizations, commercial organizations, State, local and Indian tribal governments, foreign governments, and international organizations are eligible. Only those who submit pre-proposals by the deadline are eligible to submit full proposals.

Cost Sharing Requirements: Applicants are required to provide one dollar non-Federal funds for every two dollars of Federal funds.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

National Weather Service

IFLOWS - Integrated Flood Observing and Warning System (IFLOWS) Program

Summary Description: The NWS is soliciting requests to provide capital funds for the creation, refurbishment, or replacement of Automated Flood Warning Systems (AFWS). The IFLOWS Program is a joint undertaking by the National Weather Service (NWS) and participating States to improve flood warning capabilities. The NWS provides technical support and funds for initial capital and installation costs for equipment, life-cycle equipment replacement or upgrading in coming years, software development, and centralized forecast and analysis activities.The expected period of performance is for one year with an anticipated start date of April 1, 2005. NOAA/NWS will partner with entities that can demonstrate a long-term ability to operate and maintain an AFWS and provide the data to the NWS.

Funding Availability: Approximately $500,000 will be available through this announcement for fiscal year 2005. Proposals should be prepared assuming an annual budget of no more than $100,000.Statutory Authority: 15 USC 313; 33 USC 883d; 49 USC 44720 (b). CFDA: 11.450, Integrated Flood Observing and Warning System.

Application Deadline: Proposals must be received by the NWS no later than 5 P.M., local time, October 21, 2004.

Address for Submitting Proposals: NOAA/NWS; 1325 East-West Highway, Room 13396; Silver Spring, Maryland 20910–3283.

Information Contact(s): John Bradley, NOAA/NWS; 1325 East-West Highway, Room 13396; Silver Spring, Maryland 20910–3283, or by phone at 301–713–0624 ext. 154, or fax to 301–713–1520, or via internet at john.bradley@noaa.gov.

Eligibility: Eligible applicants are institutions of higher education, other nonprofits, and, state, local and Indian tribal governments.

Cost Sharing Requirements: None. However, applicant resource commitment will be considered in the competitive selection process.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2005 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, Vol. 67, No. 210, pp. 66177B66178 for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov/* , including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216__6__TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc__ceq.htm*).

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to

reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424A,424B, SF-LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132. Administrative Procedure Act/ Regulatory Flexibility ActPrior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: July 8, 2004.

Richard N. Bennett,

Acting Director, Acquisition and Grants Office, National Oceanic and Atmospheric Administration.

[FR Doc. 04–15975 Filed 7–13–04; 8:45 am]

BILLING CODE 3510–12–S

COMMODITY FUTURES TRADING COMMISSION

Notice of Renewal of the Global Markets Advisory Committee

SUMMARY: The Commodity Futures Trading Commission has determined to renew the charter of its Global Markets Advisory Committee. As required by Sections 9(a)(2) and 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, §§ 9(a)(2) and 14(a)(2)(A), and 41 CFR 101–6.1007 and 101–6.129, the Commission has consulted with the Committee Management Secretariat of the General Services Administration. The Commission certifies that the renewal of this advisory committee is necessary and is in the public interest in connection with the performance of duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.,* as amended. This notice is published pursuant to Section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, § 9(a)(2), and 41 CFR 101–6.1015.

FOR FURTHER INFORMATION CONTACT: Martin B. White, Committee Management Officer, at 202–418–5129. Written comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The purpose of the Global Markets Advisory Committee is to provide the Commission with input on international market issues that affect the integrity and competitiveness of U.S. futures markets. The advisory committee also serves as a channel for communication between the Commission and U.S. and foreign markets, firms and end users involved in and affected by market globalization.

Contemporaneously with publication of this notice in the **Federal Register**, a copy of the renewal charter of the Global Markets Advisory Committee will be filed with the Commission, the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Agriculture. A copy of the reinstated charter will be furnished to the Library of Congress and to the Committee Management Secretariat and will be posted on the Commission's Web site at *http://www.cftc.gov.*

Issued in Washington, DC, on July 9, 2004, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–15949 Filed 7–13–04; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Critical Homeland Installation Protection will meet in closed sessions on October 4–5, 2004; and October 28–29, 2004, at SAIC, 4001 N. Fairfax Drive, Suite 500, Arlington, VA. The Task Force will assess best practices for protecting U.S. homeland installations and recommend various approaches to enhancing security and protection of these facilities.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will assess investments in technology and manpower in order to ensure proper security levels at our nation's high-value installations with particular emphasis on airports, harbors, nuclear power facilities and military bases. To that end, the Task Force will review existing best practices in force protection and security at civil, industrial and military complexes; assess shortfalls and deficiencies associated with operational security; identify promising technology and/or processes that will enhance security; and recommend methods for reducing overall manpower requirements without relinquishing robust security measures.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: July 1, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–15862 Filed 7–13–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 13, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 8, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: National Assessment of Educational Progress 2004–2007 System Clearance.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 906,322.

Burden Hours: 231,800.

Abstract: This clearance request covers all pilot, field, and full scale assessment and survey activities of the National Assessment of Educational Progress. Students are assessed and surveyed in the 4th, 8th and 12th grades as well as some of their teachers and school administrators.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2586. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–15874 Filed 7–13–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Meeting of the President's Board of Advisors on Tribal Colleges and Universities

AGENCY: White House Initiative on Tribal Colleges and Universities (WHITCU), U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the President's Board of Advisors on Tribal Colleges and Universities (the Board) and is intended to notify the general public of their opportunity to attend. This notice also describes the functions of the Board. Notice of the Board's meetings is required under section 10(a)(2) of the Federal Advisory Committee Act and by the Board's charter.

AGENDA: The purpose of the meeting will be to discuss the Board's Report to the President; the strategic plan of the Board; and the Federal agency reports submitted for calendar year 2003.

DATE AND TIME: July 20, 2004—9 a.m. to 5:30 p.m. July 21, 2004—9 a.m. to 2:30 p.m.

LOCATION: Coeur D'Alene Resort Hotel, U.S. Highway 95, Worley, Idaho.

FOR FURTHER INFORMATION CONTACT: Diane L. Cullo, Executive Director, White House Initiative on Tribal Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W207, Washington, DC 20202. Telephone: 202–260–1571, Fax: 202–260–4149.

SUPPLEMENTARY INFORMATION: The Board is established by Executive Order 13270, dated July 3, 2002, and Executive Order 13316 of September 17, 2003, to provide advice regarding the progress made by Federal agencies toward fulfilling the purposes and objectives of Executive Order 13316. The Board also provides recommendations to the President through the Secretary of Education on ways the Federal government can help tribal colleges: (1) Use long-term development, endowment building and planning to strengthen institutional viability; (2) improve financial management and security, obtain private sector funding support, and expand and complement Federal education initiatives; (3) develop institutional capacity through the use of new and emerging technologies offered by both the Federal and private sectors; (4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and (5) help implement the *No Child Left Behind Act* of 2001 and meet other high standards of educational achievement.

The general public is welcome to attend the July 20–21, 2004 meeting. However, space is limited and is available on a first-come, first-served basis. Individuals who need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should

notify Diane Cullo at (202) 260–1571 no later than July 16, 2004. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

A summary of the activities of the meeting and other related materials that are informative to the public will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the White House Initiative on Tribal Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W207, Washington, DC 20202.

Rod Paige,

Secretary, U.S. Department of Education.

[FR Doc. 04–15925 Filed 7–13–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–361–000]

Algonquin Gas Transmission Company, Algonquin Gas Transmission, LLC; Notice of Tariff Filing

July 8, 2004.

Take notice that on July 1, 2004, Algonquin Gas Transmission Company (Algonquin) and Algonquin Gas Transmission, LLC (Algonquin LLC) tendered for filing its FERC Gas Tariff, Fifth Revised Volume No. 1 and First Revised Volume No. 2 to reflect a corporate name change effective July 1, 2004. Algonquin states that this effective date coincides with the date Algonquin converts from a corporation to a limited liability company.

Algonquin and Algonquin LLC state that copies of the transmittal letter, the Appendix A list of tariff sheets, and Appendices B through D have been served upon all affected customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1548 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–353–000]

ANR Pipeline Company; Notice of Tariff Filing

July 8, 2004.

Take notice that on June 30, 2004, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of August 1, 2004.

ANR states that it is tendering the referenced tariff sheets to delete all references to the mandatory Gas Research Institute surcharges, while retaining the existing provisions relating to the remittance to GRI of voluntary amounts contributed by customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1539 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–379–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 2004.

Take notice that on July 1, 2004, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective date of August 1, 2004.

CIG states that these tariff sheets are filed to discontinue the collection of the mandatory GRI surcharges effective August 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1565 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–375–000]

Columbia Gas Transmission Corporation; Notice of Tariff Filing

July 8, 2004.

Take notice that on July 1, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of August 1, 2004:

Seventieth Revised Sheet No. 25
Seventieth Revised Sheet No. 26
Seventieth Revised Sheet No. 27
Fifty-ninth Revised Sheet No. 28
Nineteenth Revised Sheet No. 29
Sixth Revised Sheet No. 29A
Twentieth Revised Sheet No. 30, and
Fifth Revised Sheet No. 443

Columbia states it is submitting the above-referenced revised tariff sheets for the purpose of eliminating the Research, Development and Demonstration (RD&D) funding surcharge currently reflected in Columbia's rates and collected on behalf of the Gas Research Institute (GRI).

Columbia states that copies of its revised tariff sheets have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1561 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–373–000]

Columbia Gulf Transmission Company; Notice of Tariff Filing

July 8, 2004.

Take notice that on July 1, 2004, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of August 1, 2004:

Thirty-fourth Revised Sheet No. 18
Twenty-fourth Revised Sheet No. 18A
Thirty-fifth Revised Sheet No. 19
Sixth Revised Sheet No. 262

Columbia Gulf states it is submitting the above-referenced revised tariff sheets for the purpose of eliminating the Research, Development and Demonstration (RD&D) funding surcharge currently reflected in Columbia Gulf's rates and collected on behalf of the Gas Research Institute (GRI). Columbia Gulf further states that the elimination of the RD&D funding surcharge is being proposed in accordance with the terms of the 1998 Settlement Agreement entered into by GRI and numerous parties.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1559 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–365–000]

Dominion Transmission, Inc.; Notice of Application

July 8, 2004.

On June 21, 2004, Dominion Transmission, Inc. (Dominion), 120 Tredegar Street, Richmond, Virginia 23219, filed an application in the above referenced docket, pursuant to section 7(c) of the Natural Gas Act (NGA), and part 157 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations to construct, install, own, operate, and maintain certain facilities, located in West Virginia, Pennsylvania, and New York. Dominion's Northeast Storage Project will provide 9.4 Bcf of firm natural gas storage service and 163,017 dekatherms per day of winter-season firm transportation service. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call

toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Anne E. Bomar, Managing Director, Transmission Rates and Regulation, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, Virginia 23219, telephone (804) 819–2134.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: July 29, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1527 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–351–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 8, 2004.

Take notice that on June 30, 2004, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective August 1, 2004:

Nineteenth Revised Sheet No. 31
Twenty-third Revised Sheet No. 32
First Revised Sheet No. 36
Fourth Revised Sheet No. 1000
First Revised Sheet No. 1109, and
First Revised Sheet No. 1110

DTI states that the purpose of this filing is to reflect the elimination of the GRI surcharge.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1537 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–362–000]

East Tennessee Natural Gas Company and East Tennessee Natural Gas, LLC; Notice of Tariff Filing

July 8, 2004.

Take notice that on July 1, 2004, East Tennessee Natural Gas Company (East Tennessee) and East Tennessee Natural Gas, LLC (East Tennessee LLC) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, to reflect a corporate name change to become effective July 1, 2004. East Tennessee and East Tennessee LLC state this effective date coincides with the date East Tennessee converts from a corporation to a limited liability company.

East Tennessee and East Tennessee LLC state that copies of the transmittal letter, the Appendix A list of tariff sheets, and Appendices B through D have been served upon all affected customers and interested State commissions, and that copies of the revised tariff sheets in Appendix A will be provided, upon request, via overnight mail.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This

filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1549 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–369–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 2004.

Take notice that on July 8, 2004, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the tariff sheets listed in Appendix A to the filing, with an effective date of August 1, 2004.

El Paso states that these tariff sheets are filed to discontinue the collection of the mandatory GRI surcharges effective August 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1556 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–357–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 2004.

Take notice that on June 30, 2004, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2004:

Sixty-Fifth Revised Sheet No. 8A
Fifty-Seventh Revised Sheet No. 8A.01
Fifty-Seventh Revised Sheet No. 8A.02
Seventeenth Revised Sheet No. 8A.04
Sixtieth Revised Sheet No. 8B, and
Fifty-Third Revised Sheet No. 8B.01

FGT states that it is filing the referenced tariff sheets pursuant to the Gas Research Institute's (GRI) Settlement Agreement dated March 10, 1998, approved by the Commission's Order issued April 29, 1998, in Docket No. RP97–149–003; and the 2002–2006 Five-Year Plan as approved by the Commission Order issued September 19, 2001, in Docket No. RP01–434. FGT also states that it received a letter dated May 25, 2004, from GRI advising FGT to discontinue collecting the GRI surcharges effective August 1, 2004. In the instant tariff sheets, FGT states that it has reduced the current GRI demand and commodity surcharges to $0.0000 to be effective August 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1544 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–378–000]

Gas Technology Institute; Notice of Five-Year Research, Development and Demonstration Plan

July 8, 2004.

Take notice that on July 1, 2004, the Gas Technology Institute (GTI) filed an application requesting approval of a 2005–2009 Five-Year Collaborative Research, Development and Demonstration (RD&D) Plan, a 2005 GTI RD&D Program, and advance rate approval for collection of the funding of its RD&D activities for 2005, pursuant to section 154.401 of the Commission's Regulations. GTI states in its application that numerous jurisdictional natural gas companies (*i.e.*, pipelines, producers, distributors, and municipalities) support GTI's proposed budget of $48.0 million for 2005.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: August 9, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1564 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–374–000]

Granite State Gas Transmission, Inc.; Notice of Tariff Filing

July 8, 2004.

Take notice that on July 1, 2004, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of August 1, 2004:

Twenty-eighth Revised Sheet No. 21
Twenty-ninth Revised Sheet No. 22
Twentieth Revised Sheet No. 23
First Revised Sheet No. 232, and
First Revised Sheet No. 233

Granite State states it is submitting the above-referenced revised tariff sheets for the purpose of eliminating the Research, Development and Demonstration (RD&D) funding surcharge currently reflected in Granite State's rates and collected on behalf of the Gas Research Institute (GRI).

Granite State states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1560 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–366–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Change in FERC Gas Tariff

July 8, 2004.

Take notice that on July 1, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following revised sheet to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on August 1, 2004:

Fourteenth Revised Sheet No. 4A
Sixth Revised Sheet No. 11B
Fifth Revised Sheet No. 14
Fifth Revised Sheet No. 15
Seventh Revised Sheet No. 27
Fifth Revised Sheet No. 29
Third Revised Sheet No. 75
First Revised Sheet No. 75E
Third Revised Sheet No. 144
Fifth Revised Sheet No. 162

Iroquois states that the purpose of Iroquois' instant filing provides for the elimination of the Gas Research Institute (GRI) surcharge (set forth in section 12.1 of the General Terms and Conditions) from the tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1553 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–360–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Tariff Filing

July 8, 2004.

Take notice that on June 30, 2004, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix C to the filing, with effective dates of August 1, 2004.

Maritimes states that its rate case filing is being made in compliance with Article III of the uncontested Stipulation and Agreement in Docket No. RP02–134, et al., which requires Maritimes to file a rate case under section 4 of the NGA no later than April 1, 2006. Maritimes states that the purpose of this filing is to increase its mainline and incremental lateral line transportation rates.

Maritimes states that copies of its filing have been mailed to all affected customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1547 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–365–000]

MIGC, Inc.; Notice of Tariff Filing

July 8, 2004.

Take notice that on July 1, 2004 MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 6, with a proposed effective date of August 1, 2004.

MIGC states that the purpose of the filing is to revise and update the fuel retention and loss percentage factors (FL&U factors) set forth in its FERC Gas Tariff, First Revised Volume No. 1 in accordance with the requirements of section 25 of said tariff.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1552 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–367–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 2004.

Take notice that on July 1, 2004, Mojave Pipeline Company (Mojave) tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2004:

Tenth Revised Sheet No. 11
First Revised Sheet No. 200
Second Revised Sheet No. 212
First Revised Sheet No. 232
Second Revised Sheet No. 233
Second Revised Sheet No. 438

Mojave states that these tariff sheets are filed to discontinue the collection of the mandatory GRI surcharges effective August 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1554 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–376–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

July 8, 2004.

Take notice that on July 1, 2004, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to its filing, to be effective August 1, 2004.

National Fuel states that the purpose of this filing is to discontinue and to remove from its tariff the Gas Research Institute (GRI) RD&D funding surcharge, in accordance with the 1998 Settlement Agreement approved by the Commission in Docket No. RP97–149–003, *et al.* National Fuel states that the General Terms and Conditions section 24, Revenue Flow Back has been removed in its entirety because this provision expired by its terms on March 31, 2000.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1562 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–356–000]

Northwest Pipeline Corporation; Notice of Tariff Filing and Filing of Non-Conforming Service Agreement

July 8, 2004.

Take notice that on June 30, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 373, to be effective August 1, 2004. Northwest also tendered for filing a Rate Schedule TF–1 non-conforming service agreement.

Northwest states that the purpose of this filing is to: (1) Submit a Rate Schedule TF–1 service agreement containing contract-specific operational flow order provisions that do not conform to the Rate Schedule TF–1 form of service agreement contained in Northwest's tariff, (2) add this agreement to the list of non-conforming service agreements in Northwest's tariff, and (3) remove a service agreement due to termination from the list of non-conforming service agreements in Northwest's tariff.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1524 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–176–000]

Northwest Pipeline Corporation; Notice of Extension of Time

July 8, 2004.

On June 25, 2004, Northwest Pipeline Corporation (Northwest) filed a petition for temporary limited tariff waiver, seeking an extension of time to defer Northwest's tariff provisions to implement the revised Forms of Transportation Service Agreements that were accepted in the Commission's Order issued July 1, 2004, in the above-docketed proceeding. The petition states that Northwest cannot implement the revised Forms of Transportation Service Agreements until corresponding programming modifications are made to its Northwest Passage system. The petition also states that Northwest will continue to use the previously effective Forms of Transportation Service Agreements for transactions on Northwest Passage.

Upon consideration, notice is hereby given that an extension of time for implementation of the revised Forms of Transportation Service Agreements for Rate Schedules TF–1, TF–2, and TI–1 is granted to and including October 1, 2004, as requested by Northwest.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1535 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2107–016]

Pacific Gas and Electric Company; Notice Granting Late Intervention

July 8, 2004.

On December 16, 2003, Pacific Gas and Electric Company filed an application for a new license for the continued operation and maintenance of the 143-megawatt Poe Project No. 2107, located on the North Fork Feather River in Butte County, near Pulga, California. The Commission issued public notice of the application on March 24, 2004, setting May 24, 2004, as the deadline for filing motions to intervene.

On June 14, 2004, Butte County, California, filed a late motion to intervene. Granting the late motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the late motion to intervene filed by Butte County, California, is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1528 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.214 (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

July 8, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 516–393.

c. *Date Filed:* June 25, 2004.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* Lake Murray in Saluda County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Randolph R. Mahan, Manager, Environmental Programs and Special Projects, SCANA Services, Inc., Columbia, SC 29218, (803) 217–9538.

i. *FERC Contacts:* Any questions on this notice should be addressed to Mr. Steven Naugle at (202) 502–6061, or e-mail address: *steven.naugle@ferc.gov.*

j. Deadline for filing comments and or motions: August 9, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–516–393) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. Description of Proposal: South Carolina Electric & Gas Company requests Commission authorization to permit Salvatore Livreri to dredge an estimated 2,000 cubic yards of material from an area below the 360-foot contour to accommodate boat access to Lake Murray. The dredged material would be trucked to a county landfill. The proposed dredging would be performed within a cove fronting Mr. Livreri's two residential lots at 333 and 351 Wells Point Road in the Town of Prosperity, Newberry County, South Carolina.

l. Location of the Applications: The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCOnLineSupport@ferc.gov.* For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1533 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–352–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 2004.

Take notice that on June 30, 2004, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised sheets to become effective August 1, 2004:

Sixty-first Revised Sheet No. 14
Eighty-second Revised Sheet No. 15
Sixty-first Revised Sheet No. 16
Eighty-second Revised Sheet No. 17
Forty-fifth Revised Sheet No. 18
Twelfth Revised Sheet No. 22, and
Third Revised Sheet No. 196.

Southern states that the proposed tariff sheets reflect the discontinuation of the GRI Surcharge pursuant to the Gas Research Institute (GRI) Settlement August 1, 2004. In addition, Southern further states that they propose to continue to collect voluntary R&D contributions after the discontinuance of the GRI Surcharge.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1538 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–349–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

July 8, 2004.

Take notice that on June 29, 2004, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fourth Revised Sheet No. 306, with an effective date of August 1, 2004.

Tennessee states that the purpose of this filing is to revise Article II, Section 2 of the General Terms & Conditions (GT&C) of its Tariff to provide production meter operators on Tennessee's system with the right to agree to indemnity provisions if the production meter operators desire, for their own business requirements, to receive gas that does not conform with one or more parts of the gas quality specifications of Article II, Section 1 of the GT&C of Tennessee's Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1536 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–355–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

July 8, 2004.

Take notice that on June 30, 2004 Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed on Appendix A to the filing, with an effective date of August 1, 2004.

Tennessee states that it is tendering the referenced tariff sheets to delete all references to the mandatory Gas Research Institute (GRI) surcharges, while retaining the existing provisions relating to the remittance to GRI of voluntary amounts contributed by customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1541 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–382–000]

Texas Eastern Gas Transmission, LP; Notice of Tariff Filing

July 8, 2004.

Take notice that on June 30, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective August 1, 2004.

Texas Eastern states that the purpose of this filing is to reduce the Gas Research Institute (GRI) surcharges to zero effective August 1, 2004 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding (Settlement) approved by the Commission in *Gas Research Institute,* 83 FERC ¶ 61,093 (1998), *order on reh'g*, 83 FERC ¶ 61,331 (1998).

Texas Eastern states that copies of the filing have been served upon all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance,

please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1543 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–359–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

July 8, 2004.

Take notice that on June 30, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, and First Revised Volume No. 2, revised tariff sheets listed on Appendix B to the filing to become effective August 1, 2004.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file, to be effective each August 1, revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers. Texas Eastern states that all costs of electric power compression required for the incremental services under the TIME and Freehold Projects are appropriately assigned to the incremental projects as required by the Commission orders certificating the TIME and Freehold Projects.

Texas Eastern states that the proposed rate changes to the primary firm capacity reservation charges, usage rates and 100% load factor average costs reflected on the revised tariff sheets, for example, for full Access Area Boundary service from the Access Area Zone, East Louisiana, to the three market area zones are as follows:

Zone	Reservation	Usage	100% Load factor
Market 1	$0.013/Dth	$0.0001/Dth	$0.0005/Dth
Market 2	0.042/Dth	0.0004/Dth	0.0018/Dth
Market 3	0.062/Dth	0.0006/Dth	0.0026/Dth

Texas Eastern states that copies of its filing have been served upon all affected customers of Texas Eastern and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1546 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–354–000]

Texas Gas Transmission, LLC; Notice of Tariff Filing

July 8, 2004.

Take notice that on June 30, 2004, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective August 1, 2004.

Texas Gas states that the purpose of this filing is to act in accordance with the terms and conditions of the Order Approving Settlement (the Order) issued on April 29, 1998 (Docket No. RP97–149–003, *et al.*, 83 FERC ¶ 61,093), wherein the Commission ruled that funding for the Gas Research Institute (GRI) be phased down to a voluntary program by year-end, 2004.

Texas Gas states that it has been notified by letter from the GRI that it projects that the actual collections under the funding surcharges approved by the Commission will reach the approved amounts provided for in the Order by August 1, 2004; therefore, Texas Gas herein seeks to remove the GRI surcharge from its rates, effective on that date, and to amend its tariff by deleting specific references to the GRI surcharge from its General Terms and Conditions (GT&C).

Texas Gas states that copies of this filing are being mailed to all parties on Texas Gas's official list, to Texas Gas's jurisdictional customers, and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1540 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–358–000]

Transwestern Pipeline Company; Notice of Tariff Filing

July 8, 2004.

Take notice that on June 30, 2004, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective August 1, 2004:

One Hundred Twenty-Eighth Revised Sheet No. 5
Thirty-Third Revised Sheet No. 5A
Twenty-Fifth Revised Sheet No. 5A.02
Twenty-Fifth Revised Sheet No. 5A.03
Thirtieth Revised Sheet No. 5B

Transwestern states that it is filing the referenced tariff sheets pursuant to the Gas Research Institute's (GRI) Settlement Agreement dated March 10, 1998, approved by the Commission's Order issued April 29, 1998, in Docket No. RP97–149–003 and the 2002–2006 Five-Year Plan as approved by the Commission Order issued September 19, 2001, in Docket No. RP01–434. Transwestern also states that it received a letter dated May 25, 2004, from GRI advising Transwestern to discontinue collecting the GRI surcharges effective August 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1545 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–380–000]

Trunkline Gas Company, LLC; Notice of Tariff Filing

July 8, 2004.

Take notice that on July 1, 2004, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed in Appendix A attached to the filing to become effective August 1, 2004.

Trunkline states that this filing is being made to discontinue the Gas Research Institute (GRI) surcharges effective August 1, 2004, in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding (Settlement Agreement) approved by the Commission in *Gas Research Institute,* 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998).

Trunkline further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1566 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–371–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 2004.

Take notice that on July 1, 2004, Viking Gas Transmission Company (Viking) tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective August 1, 2004:

Seventeenth Revised Sheet No. 39
Fifth Revised Sheet No. 63, and
Original Sheet No. 63A

Viking states that the purpose of this filing is to amend section 17 of the General Terms and Conditions of Viking's FERC Gas Tariff to add a provision which identifies the types of discounts that Viking may enter into with customers on its systems without creating a material deviation from Viking's *pro forma* form of service agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1557 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–372–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 2004.

Take notice that on July 1, 2004, Viking Gas Transmission Company (Viking) tendered for filing to be part of Viking's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective August 1, 2004:

Third Revised Sheet No. 129
Fifth Revised Sheet No. 130

Viking is proposing to add Article IV to the form of Operational Balancing Agreement for use at delivery points (OBA) which will set forth the Daily Demand Quantity elected by the Balancing Party for use under, and as set forth in, Rate Schedule LMS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1558 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–364–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

July 8, 2004.

Take notice that on July 1, 2004, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighth Revised Sheet No. 376, to become effective July 1, 2004.

Williston Basin states that it has revised the above-referenced tariff sheet found in Section 48 of the General Terms and Conditions of its Tariff to add a receipt point, Point ID No. 05061 (Middle Prong), to Williston Basin's Powder River Pool.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1550 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–377–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

July 8, 2004.

Take notice that on July 1, 2004, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing to become a part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of August 1, 2004.

Williston Basin states that, pursuant to a May 25, 2004 letter from the Gas Research Institute, the proposed tariff changes are being filed to remove all references to the Gas Technology Institute and the Gas Research Institute from the Rate Sheets, Rate Schedules and General Terms and Conditions of its Tariff effective August 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions

or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1563 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–368–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

July 8, 2004.

Take notice that on July 1, 2004, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, with an effective date of August 1, 2004:

Thirteenth Revised Sheet No. 4C
Sixteenth Revised Sheet No. 5
Tenth Revised Sheet No. 35
Third Revised Sheet No. 73
Second Revised Sheet No. 77
Fourth Revised Sheet No. 78
Third Revised Sheet No. 92
Fifth Revised Sheet No. 97
First Revised Sheet No. 97A

WIC states that these tariff sheets are filed to discontinue the collection of the mandatory GRI surcharges effective August 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1555 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–4–000]

Panel Member List for Hydropower Licensing Study Dispute Resolution; Notice Requesting Applications for Panel Member List for Hydropower Licensing Study Dispute Resolution

July 8, 2004.

On March 12, 2004, the Commission requested applications to be included on a list of resource experts willing to serve as a third panel member in the study dispute resolution process of the Commission's hydropower integrated licensing process (ILP). We are reopening the application period until September 30, 2004, to afford interested parties more time to respond to the original request. Respondents to the initial request need not reapply to be considered.

Background

The Commission's ILP encourages informal resolution of study disagreements. In cases where this is not successful, a formal study dispute resolution process is available for State and Federal agencies or Indian tribes with mandatory conditioning authority.[1]

The ILP provides that the disputed study must be submitted to a dispute resolution panel consisting of a person from Commission staff, a person from the agency or Indian tribe referring the dispute to the Commission, and a third person selected by the other two panelists from a pre-established list of persons with expertise in the disputed resource area.[2] The third panel member (TPM) will serve without compensation, except for certain allowable travel expenses to be borne by the Commission (31 CFR part 301).

The role of the panel members is to make a finding, with respect to each disputed study request, on the extent to which each study criteria set forth in the regulations is or is not met,[3] and why. The panel will then make a recommendation to the Director of the Office of Energy Projects based on the panel's findings.

TPMs can only be selected from a list of qualified persons (TPM List) that is developed and maintained by the Commission. Each qualified panel member will be listed by area(s) and sub-area(s) of technical expertise, for example Fisheries Resources-instream flow. The Commission is seeking the service of individuals with technical expertise in specific resource areas. While such individuals should be able to promote constructive dialog among the panelists, the Commission is not seeking the services of a mediator or arbitrator.

The TPM list will be available to the public on the Commission's web site. All individuals submitting their applications to the Commission for consideration must meet the Commission's qualifications.

Application Contents

The applicant should describe in detail his/her qualifications in items 1–4 listed below. To expedite processing of the application and to ensure accurate identification of areas of interest and expertise, the applicant must, in response to item 1, list the specific resource area(s) for which he/she wishes to be considered, such as ''Aquatic Resources: water quality and instream flow'' or ''Recreational Resources: whitewater boating and general''.

[1] *See* § 5.14 of the final rule, which may be viewed on the Commission's Web site at *http://www.ferc.gov/industries/hydropower/indusact/hydrorule-part-v.pdf*, and *see* excerpted attachment describing the formal dispute resolution process.

[2] These persons must not be otherwise involved with the proceeding.

[3] *See* § 5.9 of the final rule.

1. Technical expertise, including education and experience in each resource area and sub-area for which the applicant wishes to be considered:

- Aquatic Resources
  - water quality
  - instream flows
  - fish passage
  - macroinvertebrates
  - threatened and endangered species
  - general
- Terrestrial Resources
  - wildlife biology
  - botany
  - wetlands ecology
  - threatened and endangered species
  - general
- Cultural Resources
- Recreational Resources
  - whitewater boating
  - general
- Land use
  - shoreline management
  - visual/aesthetics
  - general
- Geology
  - geomorphology
  - erosion
  - general
- Socio-economics
- Engineering
  - civil engineering
  - hydraulic engineering
  - electrical engineering
  - general

2. Knowledge of the effects of construction and operation of hydroelectric projects.

3. Working knowledge of laws relevant to expertise, such as: The Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, the Coastal Zone Management Act, the Wild and Scenic Rivers Act, the Federal Power Act or other applicable laws.

4. Ability to promote constructive communication about a disputed study.

How To Submit Applications

Applicants must submit their applications along with the names and contact information of three references. Applicants will be individually notified of the Commission's decision.

Dates: The application period closes on September 30, 2004. Additional future application periods may be announced by the Commission.

Addresses: Applications must be filed electronically via the Internet. *See* the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. Applications should reference ''Docket No. AD04–4–000, Notice Requesting Applications for Panel Member List for Hydropower Licensing Study Dispute Resolution''.

Other Information: Requests submitted must be in Word, Times New Roman 13 pt. font, and must not be longer than ten pages in length. Complete individual contact information must be provided.

For Further Information Contact: David Turner, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First Street, NE., Washington, DC 20426, (202) 502–6091, *david.turner@ferc.gov*.

Magalie Salas,

Secretary.

Attachments:

§ 5.14 of the final rule: Formal Dispute Resolution Process

Attachment

[Docket No. RM02–16–000]

§ 5.14 Formal study dispute resolution process.

(a) Within 20 days of the Study Plan Determination, any Federal agency with authority to provide mandatory conditions on a license pursuant to FPA Section 4(e), 16 U.S.C. 797(e), or to prescribe fishways pursuant to FPA Section 18, 16 U.S.C. 811, or any agency or Indian tribe with authority to issue a water quality certification for the project license under Section 401 of the Clean Water Act, 42 U.S.C. 1341, may file a notice of study dispute with respect to studies pertaining directly to the exercise of their authorities under Sections 4(e) and 18 of the Federal Power Act or Section 401 of the Clean Water Act.

(b) The notice of study dispute must explain how the disputing agency's or Indian tribe's study request satisfies the criteria set forth in § 5.9(b), and shall identify and provide contact information for the panel member designated by the disputing agency or Indian tribe, as discussed in paragraph (d) of this Section.

(c) Studies and portions of study plans approved in the Study Plan Determination that are not the subject of a notice of dispute shall be deemed to be approved, and the potential applicant shall proceed with those studies or portions thereof.

(d) Within 20 days of a notice of study dispute, the Commission will convene one or more three-person Dispute Resolution Panels, as appropriate to the circumstances of each proceeding. Each such panel will consist of:

(1) A person from the Commission staff who is not otherwise involved in the proceeding, and who shall serve as the panel chair;

(2) One person designated by the Federal or state agency or Indian tribe that filed the notice of dispute who is not otherwise involved in the proceeding; and

(3) A third person selected by the other two panelists from a pre-established list of persons with expertise in the resource area. The two panelists shall make every reasonable effort to select the third panel member. If however no third panel member has been selected by the other two panelists within 15 days, an appropriate third panel member will be selected at random from the list of technical experts maintained by the Commission.

(e) If more than one agency or Indian tribe files a notice of dispute with respect to the decision in the Preliminary Determination on any information-gathering or study request, the disputing agencies or Indian tribes must select one person to represent their interests on the panel.

(f) The list of persons available to serve as a third panel member will be posted, as revised from time-to-time, on the hydroelectric page of the Commission's website. A person on the list who is requested and willing to serve with respect to a specific dispute will be required to file with the Commission at that time a current statement of their qualifications, a statement that they have had no prior involvement with the proceeding in which the dispute has arisen, or other financial or other conflict of interest.

(g) All costs of the panel members representing the Commission staff and the agency or Indian tribe which filed the notice of dispute will be borne by the Commission or the agency or Indian tribe, as applicable. The third panel member will serve without compensation, except for certain allowable travel expenses as defined in 31 CFR part 301.

(h) To facilitate the delivery of information to the dispute resolution panel, the identity of the panel members and their addresses for personal service with respect to a specific dispute resolution will be posted on the hydroelectric page of the Commission's web site.

(i) No later than 25 days following the notice of study dispute, the potential applicant may file with the Commission and serve upon the panel members comments and information regarding the dispute.

(j) Prior to engaging in deliberative meetings, the panel shall hold a technical conference for the purpose of clarifying the matters in dispute with reference to the study criteria. The technical conference shall be chaired by the Commission staff member of the panel. It shall be open to all participants, and the panel shall receive information from the participants as it deems appropriate.

(k) No later than 50 days following the notice of study dispute, the panel shall make and deliver to the Director of the Office of Energy Projects a finding, with respect to each information or study request in dispute, concerning the extent to which each criteria set forth in § 5.9(b) is met or not met, and why, and make recommendations regarding the disputed study request based on its findings. The panel's findings and recommendations must be based on the record in the proceeding. The panel shall file with its findings and recommendations all of the materials received by the panel. Any recommendation for the potential applicant to provide information or a study must include the technical specifications, including data acquisition techniques and methodologies.

(l) No later than 70 days from the date of filing of the notice of study dispute, the Director of the Office of Energy Projects will review and consider the recommendations of the panel, and will issue a written

determination. The Director's determination will be made with reference to the study criteria set forth in § 5.9(b) and any applicable law or Commission policies and practices, will take into account the technical expertise of the panel, and will explain why any panel recommendation was rejected, if applicable. The Director's determination shall constitute an amendment to the approved study plan.

[FR Doc. E4–1542 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–989–002, et al.]

Green Mountain Power Corporation, et al.; Electric Rate and Corporate Filings

July 7, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Green Mountain Power Corporation

[Docket No. ER01–989–002]

Take notice that on July 2, 2004, Green Mountain Power Corporation (GMP) tendered for filing an updated triennial market power analysis and modifications to its Wholesale Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) to incorporate Market Behavior Rules adopted by the Commission in Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003). GMP requests an effective date of July 3, 2004.

Comment Date: July 23, 2004.

2. New England Power Pool et al.; ISO New England, Inc.

[Docket No. ER02–2330–029]

Take notice that on July 1, 2004, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. (ISO–NE) filed ISO–NE's Report on Alternatives to Full Nodal Pricing for Load in compliance with the Commission's order issued January 28, 2004, in Docket No. ER02–2330, New England Power Pool *et al.*, 106 FERC ¶ 61,059 (2004).

The NEPOOL Participants Committee states that copies of the filings were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: July 22, 2004.

3. Devon Power LLC, et al.

[Docket Nos. ER03–563–039; EL04–102–002]

Take notice that on July 2, 2004, ISO New England Inc. (ISO) submitted a compliance filing pursuant to Commission's order issued June 2, 2004, in Docket Nos. ER03–563–030 and EL04–102–000, 107 FERC ¶ 61,240.

ISO states that copies of the filing have been served on all parties to the above-captioned proceeding.

Comment Date: July 23, 2004.

4. New England Power Pool

[Docket No. ER04–984–000]

Take notice that on July 1, 2004, the New England Power Pool (NEPOOL) Participants Committee filed to terminate the membership of Providence Energy Services (Providence) and Gardiner Paperboard (Gardiner) in NEPOOL. The Participants Committee requests a July 1, 2004, effective date for the termination of the membership status of Providence and an August 1, 2004, effective date for the termination of the membership of Gardiner.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: July 22, 2004.

5. Maine Public Service Company

[Docket No. ER04–894–001]

Take notice that on July 2, 2004, Maine Public Service Company (MPS) submitted an amendment to its May 28, 2004, filing of minor revisions to its open access transmission tariff (OATT). MPS states that this amendment contained certain substitute revised tariff revisions. MPS requests an effective date of June 1, 2004.

MPS states that the copies of this filing were served on the Maine Public Utilities Commission, the Maine Public Advocate, current MPS open access transmission tariff customers, and the official service list compiled by the Secretary in this proceeding.

Comment Date: July 23, 2004.

6. New England Power Pool

[Docket No. ER04–985–000]

Take notice that on July 1, 2004, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to (1) permit NEPOOL to expand its membership to include Aleph One, Inc. (Aleph One) and Seneca Energy II, LLC (Seneca Energy); and (2) to terminate the memberships of Virginia Electric and Power Company (Virginia Power) and Power Development Company, LLC (PDC) in NEPOOL. The Participants Committee requests the following effective dates: June 1, 2004, for the termination of Virginia Power and PDC; and July 1, 2004, for the commencement of participation in NEPOOL by Aleph One and Seneca Energy.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: July 22, 2004.

7. PJM Interconnection, L.L.C.

[Docket No. ER04–986–000]

Take notice that on July 2, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and ConocoPhillips Company. PJM requests an effective date of June 2, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: July 23, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER04–987–000]

Take notice that on July 2, 2004, PJM Interconnection, L.L.C. (PJM) filed revisions to the PJM Open Access Transmission Tariff (PJM Tariff) and Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to allocate to loads in each transmission zone the costs of synchronous condensers acting at PJM's direction. PJM requests an effective date of September 1, 2004.

PJM states that copies of the filing were served on all PJM members and the utility regulatory commissions in the PJM region.

Comment Date: July 23, 2004.

9. PJM Interconnection, L.L.C.

[Docket No. ER04–988–000]

Take notice that on July 2, 2004, PJM Interconnection, L.L.C. (PJM), submitted an executed interconnection service agreement and an executed construction service agreement among PJM, PPL Distributed Generation, LLC, and Public Service Electric and Gas Company. PJM requests an effective date of June 4, 2004.

PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: July 23, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1523 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4914–010–WI De Pere Hydroelectric Project]

International Paper Company; Notice of Availability of Environmental Assessment

July 8, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 380 (Order No. 486; 52 FR 47897), the staff of the Office of Energy Projects (staff) has reviewed the application for a subsequent license for the De Pere Hydroelectric Project No. 4914 and has prepared an Environmental Assessment (EA) for the project. The De Pere Hydroelectric Project is located at the U.S. Army Corps of Engineers' (COE) De Pere Dam, on the Fox River, in the City of De Pere, Brown County, Wisconsin.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects.

Because staff intends this to be the only EA prepared for this project, any comments on this EA should be filed within 30 days from the date of this notice and should be addressed to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix ''De Pere Hydroelectric Project No. 4914–010'' to all comments. For further information, contact Peter Leitzke at (202) 502–6059 or *peter.leitzke@ferc.gov*.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1532 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6338–003]

Suncook Leathers, Inc.; Notice of Availability of Environmental Assessment

July 8, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has prepared an Environmental Assessment (EA) for an application for surrender of exemption for the Pittsfield Project. The Pittsfield Project, FERC No. 6338, is located on the Suncook River in Merrimack County, New Hampshire.

The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov.* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

For further information, contact Rebecca Martin at 202–502–6012.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1534 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–362–000]

Colorado Interstate Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Boehm Storage Field Abandonment and Conversion Project and Request for Comments on Environmental Issues

July 8, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Boehm Storage Field Abandonment and Conversion Project involving abandonment, conversion, and/or reclassification of certain natural gas storage wells and gathering lines by Colorado Interstate Gas Company (CIG) in Morton County, Kansas.[1] This notice

[1] CIG's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

explains the scoping process we [2] will use to gather input from the public and interested agencies on the project. Your input will help us determine which issues need to be evaluated in the EA. Please note that the scoping period will close on August 9, 2004.

If you are a landowner receiving this notice, you may be contacted by a company representative about existing wells, or storage gathering pipelines. CIG proposes to abandon all affected gathering lines in place.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice CIG provided to landowners. This fact sheet addresses a number of typically asked questions, including how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

CIG proposes to plug and abandon nine wells and to convert or reclassify an additional 12 wells within the Boehm Storage Field. These activities are necessary for CIG to comply with gas storage regulations adopted by the Kansas Corporation Commission (KCC) on July 1, 2002, and to allow CIG to operate the Boehm Storage Field on a more efficient basis. Specifically, CIG is required to obtain a Gas Storage Operating Permit for the Boehm Storage Field from the KCC. In order to comply with requirements of the permit, any well that does not demonstrate mechanical integrity must either be repaired or plugged and abandoned.

Specifically, CIG proposes to plug and abandon the following wells for the reasons listed:

- Well Nos. 1, 11, 17, and 30, due to subsurface conditions, and in concert with the KCC's new regulations;
- Well Nos. 6, 18, 29, and 43. With the continued depletion of the Keyes Reservoir, these observation wells are no longer needed; and
- Well No. 38, designated as ''G'' observation well. This well is located at some distance from the lateral extent of the ''G'' storage zone in Boehm.

In addition, CIG also proposes to:

- Convert and reclassify four Keyes observation wells (Well Nos. 25, 37, 39, and 42) into ''G'' observation wells;
- Convert and reclassify three ''G'' injection/withdrawal wells (Well Nos. 36, 44, and 47) and one Keyes observation well (Well No. 21) to ''G'' Reservoir observation wells; and
- Convert and reclassify three Keyes blowdown wells (Well Nos. 23, 26, and 34) as ''G'' injection/withdrawal wells; and
- Convert and reclassify one Keyes blowdown well (Well No. 35) as a Keyes observation well.

The location of the project facilities is shown in appendix 1.[3]

Land Requirements for Proposed Activities

The proposed activities would temporarily impact approximately 43.5 acres, which includes a construction area of 300 feet by 300 feet (2.07 acres) for each well. A significant portion of this area (43.0 acres) would be used for staging and work area purposes only. No grading or vegetation removal would be required. Approximately 0.4 acre would be permanently impacted by the proposed activities, which includes a bellhole of approximately 25 feet by 25 feet (0.02 acre) around each well.

No new access roads or expansion of existing access roads would be required for project activities. No new permanent right-of-way, extra temporary work areas, or storage areas have been identified for the project.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA, we will discuss impacts that could occur as a result of the proposed project under these general headings:

- Geology and soils.
- Water resources.
- Land use.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.

Our independent analysis of the issues will be included in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP04–362–000.
- Mail your comments so that they will be received in Washington, DC on or before August 9, 2004.

We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. To expedite our receipt and consideration of your comments, the Commission strongly encourages electronic submission of any comments on this project. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can submit comments

[2] ''We,'' ''us,'' ''our'' refer to the environmental staff of the Office of Energy Projects.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices werre sent to all those receiving this notice in the mail.

you will need to create a free account, which can be created by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of submission you are making. This submission is considered a ''Comment on Filing.''

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners whose property may be used temporarily for project purposes. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet website (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, CP04–362). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1526 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 8, 2004.

a. *Type of Application:* Amendment of License.

b. *Project Numbers:* P–2403–048, P–2534–068, P–2666–023 and P–2712–055.

c. *Date Filed:* June 25, 2004.

d. *Applicant:* PPL Maine, LLC.

e. *Name of Projects:* Veazie Project (P–2403), Milford Project (P–2534), Medway Project (P–2666), and Stillwater Project (P–2712).

f. *Location:* The Veazie Project is located on the Penobscot River in Penobscot County, Maine. The Milford Project is located on the Penobscot and Stillwater River in Penobscot County, Maine. The Stillwater Project is located on the Stillwater River in Penobscot County, Maine. The Medway Project is located on the West Branch Penobscot River in Penobscot County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Scott D. Hall, PPL Maine, LLC, Davenport Street, P.O. Box 276, Milford, ME 04461, phone (207) 827–5364.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Fletcher at (202) 502–8901, or e-mail address: *robert.fletcher@ferc.gov.*

j. *Deadline for filing comments and or motions:* August 9, 2004.

k. *Description of Request:* The licensee for each of these four projects requests Commission approval of the amendment application for each project in accordance with section IV of the Lower Penobscot River Multiparty Settlement Agreement (Agreement) filed with the Commission on June 25, 2004. For the Veazie Project, the licensee proposes to amend license articles 407, 408, 409, and 410 to be consistent with the fish passage conditions in the Agreement. For the Milford Project, the licensee proposes to amend license articles 301, 305, 402, 407, 408, 409, and 411, and add six new articles to be consistent with the Agreement. For the Medway Project, the licensee proposes to amend article 402 to read ''an impoundment surface elevation within six inches of 260.3 feet above mean sea level'' which reflects a reservoir level increase of one foot, and add an additional article requiring the licensee to implement the requirements of Attachment B to the Agreement as it pertains to the Medway Project. For the Stillwater Project, the licensee proposes to: (1) Amend article 401 to read ''a normal full pond elevation of 94.65 feet'' to reflect a one foot increase in reservoir elevation; (2) amend article 402 to change the required minimum flows from ''a permanent minimum flow of 40 cubic feet per second (cfs) into the west bypassed channel and a permanent flow of 155 cfs into the east bypassed channel'' to ''a permanent minimum flow of 20 cubic feet per second (cfs) into the west bypassed channel and a permanent flow of 50 cfs into the east bypassed channel''; (3) amend articles 406, 407, 408, and 409 to be consistent with the fish passage conditions in the Agreement; and (4) add an additional article requiring the licensee to implement the requirements of Attachment B to the Agreement as it pertains to the Stillwater Project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room

2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or 1–866–208–3676 for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–2403–048, P–2534–068, P–2666–023 and/or P–2712–055). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1529 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 8, 2004.

a. *Type of Application:* Amendment of License.

b. *Project Number:* P–2600–056.

c. *Date Filed:* June 25, 2004.

d. *Applicant:* Bangor Pacific Hydro Associates.

e. *Name of Project:* West Enfield Project.

f. *Location:* The West Enfield Project is located on the Penobscot River in Penobscot County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) –825(r) and 799 and 801.

h. *Applicant Contact:* Scott D. Hall, Bangor Pacific Hydro Associates c/o PPL Maine, LLC, Davenport Street, P.O. Box 276, Milford, ME 04461, phone (207) 827–5364.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Fletcher at (202) 502–8901, or e-mail address: *robert.fletcher@ferc.gov*.

j. *Deadline for filing comments and or motions:* August 9, 2004.

k. *Description of Request:* The licensee requests Commission approval of the amendment application for the West Enfield Project in accordance with section IV of the Lower Penobscot River Multiparty Settlement Agreement (Agreement) filed with the Commission on June 25, 2004. Specifically, the licensee proposes to increase the impoundment level at the West Enfield Project by one foot, from 155.1 feet mean sea level (MSL) to 156.1 feet MSL by adding one foot of height to the existing flashboard system. Further, the licensee requests that articles 41 and 46 be amended to reflect provisions of the agreement and 4 new articles be added to the licensee to reflect various provisions of the agreement as they pertain to the West Enfield Project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or call 1–866–208–3676 for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–2600–056). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application.

A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1530 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

PPL Holtwood, LLC (PPL); Notice of Settlement Agreement and Soliciting Comments

July 8, 2004.

Take notice that the following Offer of Settlement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Offer of settlement.

b. *Project No.:*487–034.

c. *Date Filed:* June 30, 2004.

d. *Applicant:* PPL Holtwood, LLC (PPL) .

e. *Name of Project:* Lake Wallenpaupack Hydroelectric Project.

f. *Location:* On Wallenpaupack Creek, in Wayne and Pike Counties, Pennsylvania.

g. *Filed Pursuant to:*Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Gary Petrewski, PPL Generation, LLC, Two North Ninth Street (GENPL6), Allentown, PA 18101, 610–774–5996.

i. *FERC Contact:* Patrick K. Murphy (202) 502–8755 or *patrick.murphy@ferc.gov.*

j. *Deadline for filing comments:* The deadline for filing comments on the Offer of Settlement is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the date of this notice. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 395.2001(a)(1)(iii) and the instructions of the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

k. *Description of Filing:* PPL filed the Offer of Settlement on behalf of itself and the United States Department of the Interior: United States Fish and Wildlife Service and National Park Service, Pennsylvania Fish and Boat Commission, Lake Wallenpaupack Watershed Management District, Hawley Borough, Palmyra Township, Pike County; Lake Wallenpaupack Recreation Council; Pike-Wayne Trout Unlimited; Southern Wayne Regional Chamber of Commerce; Indian Rocks P.O.A. Inc., Pike-Wayne Association of Realtors, Wallenpaupack Area School District; Wallenpaupack Lake Estates; Cove Point Club, Inc.; Wallenpaupack Marine Trades Association; Threshman River Rides & Watercraft Access Facility; Richard Wollaver, Briar Hill Association; Ironwood Point Recreation Area; and Ledgedale Recreation Area. PPL requests that the Commission approve the Settlement.

l. A copy of the Settlement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits in the docket number field to access the documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item j above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1531 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Extension of Time To Commence Project Construction and Soliciting Comments, Motions To Intervene, and Protests

July 8, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 7115–035.

c. *Date Filed:* June 21, 2004.

d. *Applicant:* Homestead Energy Resources, LLC.

e. *Name of Project:* George W. Andrews.

f. *Location:* At the Corps of Engineers' George W. Andrews Lock and Dam on the Chattahoochee River in Houston County, Alabama and Early County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Charles B. Mierek, Homestead Energy Resources, LLC., 5250 Clifton-Glendale Rd., Spartanburg, SC 29307–4618, (864) 579–4405.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* August 9, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–7115–035) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Amendment:* Pursuant to Sections 4.200(c) and 4.202(a) of the Commission's regulations

and Public Law 106–213, the applicant requests that its license be amended to extend the deadline for commencement of construction until September 21, 2006. The applicant also requests that completion of construction be extended by an additional four years from any extended commencement of construction date that the Commission grants.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1567 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–8–000]

Electric Creditworthiness Standards; Errata Notice

July 8, 2004.

On May 28, 2004, the Commission issued a ''Notice Of Technical Conference And Request For Written Comments On Credit-Related Issues For Electric Transmission Providers, Independent System Operators, and Regional Transmission Organizations'' in the above-referenced proceeding.

The following dockets should have been included in the caption of the notice: ISO New England, Inc., ER04–121–001; New York Independent System Operator, Inc., ER03–552–006 and ER03–984–006; New England Power Pool, ER04–984–000; Midwest Independent Transmission System Operator, Inc., ER04–691–000 and EL04–104–000; PJM Interconnection, LLC, ER03–1117–001; and PJM Interconnection, LLC, ER03–1101–002 and ER03–1101–003. The notice is hereby revised to include those dockets in the caption of the notice, because they involve pending credit-related issues that might be touched upon at the technical conference.

The caption should read as follows:

Electric Creditworthiness Standards—Docket No. AD04–8–000

ISO New England, Inc.—Docket No. ER04–121–001.

New York Independent System Operator, Inc.—Docket Nos. ER03–552–009 and ER03–984–007.

New England Power Pool—Docket No. ER04–984–000.

Midwest Independent Transmission System Operator, Inc.—Docket Nos. ER04–691–000 and EL04–104–000.

PJM Interconnection, LLC—Docket No. ER03–1117–001.

PJM Interconnection, LLC—Docket Nos. ER03–1101–002 and ER03–1101–003.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1525 Filed 7–13–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7787–5]

Notice of the 2004 Clean Air Excellence Awards Program

AGENCY: Environmental Protection Agency.

ACTION: Request for Nominations for Clean Air Excellence Awards.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Excellence Awards Program in February, 2000. This is an annual awards program to recognize outstanding and innovative efforts that support progress in achieving clean air. This notice announces the competition for the Year 2004 program.

Awards Program Notice: Pursuant to 42 U.S.C. 7403(a)(1) and (2) and sections 103(a)(1) and (2) of the Clean Air Act (CAA), notice is hereby given that the EPA's Office of Air and Radiation (OAR) announces the opening of competition for the Year 2004 ''Clean Air Excellence Awards Program'' (CAEAP). The intent of the program is to recognize and honor outstanding, innovative efforts that help to make progress in achieving cleaner air. The CAEAP is open to both public and private entities. Entries are limited to the United States. There are six award categories: (1) Clean Air Technology; (2) Community Development/ Redevelopment; (3) Education/ Outreach; (4) Regulatory/Policy Innovations; (5) Transportation Efficiency Innovations; and (6) Outstanding Individual Achievement Award. Awards are given on an annual basis and are for recognition only.

Entry Requirements: All applicants are asked to submit their entry on a CAEAP entry form, contained in the CAEAP Entry Package, which may be obtained from the Clean Air Act Advisory Committee (CAAAC) Web site at *http://www.epa.gov/oar/caaac* by clicking on Awards Program or by contacting Mr. Pat Childers, U.S. EPA at 202–564–1082 or 202–564–1352 (Fax), mailing address: Office of Air and Radiation (6102A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The entry form is a simple, three-part form asking for general information on the applicant and the proposed entry; asking for a description of why the entry is deserving of an award; and requiring information from three (3) independent references for the proposed entry. Applicants should also submit additional supporting documentation as necessary. Specific directions and information on filing an entry form are included in the Entry Package.

Judging and Award Criteria: Judging will be accomplished through a screening process conducted by EPA staff, with input from outside subject experts, as needed. Members of the CAAAC will provide advice to EPA on the entries. The final award decision will be made by the EPA Assistant Administrator for Air and Radiation. Entries will be judged using both general criteria and criteria specific to each individual category. There are four (4) general criteria: (1) The entry directly or indirectly (*i.e.*, by encouraging actions) reduces emissions of criteria pollutants or hazardous/toxic air pollutants; (2) The entry demonstrates innovation and uniqueness; (3) The entry provides a model for others to follow (*i.e.*, it is replicable); and (4) The positive outcomes from the entry are continuing/sustainable. Although not required to win an award, the following general criteria will also be considered in the judging process: (1) The entry has positive effects on other environmental media in addition to air; (2) The entry demonstrates effective collaboration and partnerships; and (3) The individual or organization submitting the entry has effectively measured/evaluated the outcomes of the project, program, technology, etc. As previously mentioned, additional criteria will be used for each individual award category. These criteria are listed in the 2004 Entry Package.

DATES: All submission of entries must be postmarked by September 17, 2004

ADDRESSES: Clean Air Excellence Awards, Attn Mr. Pat Childers, U.S. EPA Office of Air and Radiation (6102A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Concerning this awards program please use the CAAAC Web site *http://www.epa.gov/air/caaac* and click on awards program or contact Mr. Pat Childers, U.S. EPA at 202–564–1082 or 202–564–1352 (Fax), mailing address: Office of Air and Radiation (6102A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

Dated: July 7, 2004.

Robert Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 04–15948 Filed 7–13–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7787–7]

Availability of ''Allocation of Fiscal Year 2004 Operator Training Grants''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled ''Allocation of Fiscal Year 2004 Operator Training Grants'' issued on July 2, 2004. This memorandum provides National guidance for the allocation of funds used under section 104(g)(l) of the Clean Water Act.

ADDRESSES: Municipal Assistance Branch, U.S. EPA, 1200 Pennsylvania Avenue, NW., (4204–M), Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Margaret Dodds, (202) 564–0728 or *dodds.margaret@epa.gov*.

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/mab/104gallocmem04.pdf*.

Dated: July 6, 2004.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 04–15946 Filed 7–13–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0193; FRL–7366–4]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency(EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Yeast Hydrolysate Liquid and KeyPlex 350 containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Diana M. Horne, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8367; e-mail address: *horne.diana@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other RelatedInformation?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0193. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of

Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae*, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of August 6, 2003 (68 FR 46607) (FRL–7316–7), which announced that the Interregional Research Project No. 4 (IR-4), Rutgers University, Technology Center of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 on behalf of Morse Enterprises Limited, Inc., Brickell East, Floor Ten, 151 South East 15 Road, Miami, FL 33129, had submitted applications to register a manufacturing use product, Yeast Hydrolysate Liquid (EPA File Symbol 73512–E) and the end use product, KeyPlex 350 (EPA File Symbol 73512–R) containing the new active ingredient Yeast Extract Hydrolysate from *Saccharomyces cerevisiae*, which was not included in any previously registered product.

The following products were approved on February 19, 2004.

1. The manufacturing use product, Yeast Hydrolysate Liquid, containing 2.5% active ingredient (EPA Registration Number 73512–2) for use in the management of plant diseases.

2. The end use product, KeyPlex 350, containing 0.063% active ingredient (EPA Registration Number 73512–1 for use in the management of plant diseases.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 29, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–15726 Filed 7–13–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0192; FRL–7366–5]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Diana M. Horne, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8367; e-mail address: *horne.diana@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0192. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell Street, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. EUP

EPA has issued the following EUP:

69834–EUP–2. Issuance. EDEN Bioscience Corporation, 3830 Monte Villa Parkway, Suite 100, Bothell,

Washington 98021–7266. This EUP allows the use of 70.85 pounds of the biochemical pesticide Harpin αβ protein on 4,942 acres of citrus, cotton, field corn, ornamentals, peanut, rice, soybean, sugarcane, and wheat to evaluate the control of post harvest diseases, enhancing overall plant health, thus improving stand establishment and enhancing crop yield and quality. The program is authorized only in the States of Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Washington. The EUP is effective from April 26, 2004 to April 26, 2006. A tolerance has been established for residues of the active ingredient in or on all food commodities.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: June 29, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–15725 Filed 7–13–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7787–1]

Notice of Review of Water Quality Indicators and/or Rapid Measurement Technology

AGENCY: U.S. Environmental Protection Agency, National Health and Environmental Effects Research Laboratory.

ACTION: Notice.

SUMMARY: This review will be conducted, and the information collected, by the Epidemiology and Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency (EPA). Product information packages collected for review are strictly voluntary. This notice is a result of Section 3(a)(v)(1) of the Beaches Environmental Assessment and Coastal Health Act of 2000 and the strategic plan for EPA's Office of Research and Development (ORD) and the Office of Water entitled ''Action Plan for Beaches and Recreational Water.''

Current EPA guidelines (Section 303(c) Clean Water Act) recommend the use of cultural methods for E. coli and enterococci to measure recreational water quality. These methods produce results in 24 hours creating a delayed response for recreational water managers. This shortcoming in the current practices for measuring recreational water quality has led EPA to consider new technology and indicators that will provide rapid measurement of water quality (preferably 2 hours or less). This will give vendors the opportunity to showcase technology and determine needs for current industry.

Packages submitted should include the following information (if applicable):

1. Cost of the equipment/instrument?
2. Cost of supplies *per test* (List items needed with individual cost)?
3. Commercially available? How long has it been on the market? Are supplies commercially available?
4. Shipping time?
5. Is it portable? Laboratory or field use?
6. Skill level for operators? Do they need special training? Is it included in purchase?
7. Computer needed? Is it included? Specifications?
8. Specificity for target organisms? False-positive and false-negative rates?
9. Limit of detection?
10. Types of samples tested (primarily, but not limited to, types of water samples)?
11. Volume of sample required?
12. Detect live organisms?
13. Developed/validated method or experimental method?
14. Analysis time for one sample?
15. Preparation time for one sample?
16. How many samples can be analyzed per day?
17. Quality control procedures?
18. Is the system sterile? Cleaning and sanitization procedures?
19. References where equipment/instrument was used?
20. Data form (tables, graphs, etc.) and examples?
21. Can data be stored in the equipment/instrument, if portable?
22. Include brochures and pictures/photos/schematics.
23. Warranty and repair services?
24. Any distinctive elements that uniquely qualify this instrument or methods above others.

DATES: Review of information packages will begin on July 30, 2004. All interested parties should submit packages on or before March 31, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sams, (919), 843–3161, FAX: (919) 966–0655, E-mail: *sams.elizabeth@epa.gov*, or by mailing a request Elizabeth Sams, U.S. EPA (MD 58–C), Research Triangle Park, NC 27711.

Dated: June 1, 2004.

Harold Zenick,

Associate Director for Health, Office of Research and Development.

[FR Doc. 04–15947 Filed 7–13–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 29, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 13, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th

Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0967.

Title: Section 79.2, Accessibility of Programming Providing Emergency Information.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, local, or tribal governments.

Number of Respondents: 100.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 210 hours.

Total Annual Cost: $18,000.

Privacy Impact Assessment: Yes.

Needs and Uses: 47 CFR 79.2 of the Commission's rules are designed to ensure that persons with hearing and visual disabilities have access to the critical details of emergency information. The Commission adopted the rules to assist persons with hearing disabilities on April 14, 2000, in the Second Report and Order in MM Docket No. 95–176. The Commission modified the rules to assist persons with visual disabilities on July 21, 2000, in the *Report and Order* in MM Docket No. 99–339. Because the Commission adopted its rules for persons with different disabilities at different times, it has previously provided separate Paperwork Reduction Act submissions for them as follows: Rules for persons with hearing disabilities are associated with OMB Control No. 3060–0945; and rules for persons with visual disabilities are associated with OMB Control No. 3060–0967. Because both sets of rules, however, make use of the same complaint procedure, which triggers the need for the submission, the Commission now consolidates its submission. 47 CFR 79.2(c) requires that complaints be transmitted to the Commission, and that each complaint include following: The name of the video programming distributor at issue; the date and time of the omission of the emergency information; and the type of emergency. The Commission then notifies the video programming distributor, which must reply within 30 days. This revised information collection also includes a Privacy Impact Assessment to comply with OMB Memorandum M–03–22 (September 26, 2003).

OMB Approval Number: 3060–0698.

Title: Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico, ET Docket No. 96–2.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not for profit institutions; and State, local, or tribal government.

Number of Respondents: 515.

Estimated Time per Response: 35 minutes (avg.) (multiple responses annually).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 300 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No Impact(s).

Needs and Uses: On October 15, 1997, the FCC released a Report and Order, ET Docket No. 96–2, RM–8165, FCC 97–347, that established a Coordination Zone for new and modified radio facilities in various communications services that cover the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico. The coordination zone and notification procedures enable the Arecibo Radio Astronomy Observatory to receive information needed to assess whether an applicant's proposed operations will cause harmful interference to the Arecibo Observatory's operations, which also promotes efficient resolution of coordination problems between the applicants and the Arecibo Observatory.

OMB Control Number: 3060–0029.

Title: Application for TV Broadcast Station License, FCC Form 302–TV.

Form Number: FCC 302–TV.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 200.

Estimated Hours per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 500.

Total Annual Cost: $203,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Licensees and permittees of TV broadcast stations are required to file FCC Form 302–TV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. The Commission revised the FCC 302–TV in June 2001 to facilitate electronic filing by replacing narrative exhibits with the use of certifications and an engineering technical box. The Commission also deleted and narrowed overly burdensome questions. The FCC 302–TV has been supplemented with detailed instructions to explain processing standards and rule interpretations to help ensure that applicants certify accurately. These changes streamlined the Commission's processing of FCC 302–TV applications. FCC staff use the data to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data are then extracted from FCC 302–TV for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15863 Filed 7–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 29, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's

burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 13, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L_LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0854.

Title: Truth-in-Billing Format, CC Docket No. 98–170.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,788.

Estimated Time per Response: 5 to 465 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure.

Total Annual Burden: 1,565,775 hours.

Total Annual Cost: 9,000,000.

Needs and Uses: The Commission adopted rules to make consumers' telephone bills easier to read and understand. Telephone bills do not provide necessary information in a user-friendly format. As a result, consumers are experiencing difficulty in understanding their bills, in detecting fraud, in resolving billing disputes, and in comparing carrier rates to get the best values for themselves. Consumers use this information to help them understand their telephone bills. Consumers need this information to protect them against fraud and to help them resolve billing disputes if they wish.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15864 Filed 7–13–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 28, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 13, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

Form Number: FCC 301.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,570.

Estimated Time per Response: 2 to 4 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 5,827 hours.

Total Annual Costs: $30,811,550.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On September 3, 2003, the United States Circuit Court of Appeals for the Third Circuit issued an *Order* staying the effectiveness of the new media ownership rules adopted by the Commission on June 2, 2003. (Report and Order, MB Docket 02–277 and MM Docket 01–235, 01–237, and 00–244, and Notice of Proposed Rulemaking, *In the Matter of 2020 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to section 202 of the Telecommunications Act of 1996*.) 68 FR 46285, August 5, 2003. The Court ordered ''that the prior ownership rules remain in effect pending resolution of these proceedings.'' *Prometheus Radio Project* v. *FCC*, No. 03–3388 (3d Cir. Sept. 3, 2003) (*per curiam*). The Court's *Order* requires that the Commission process broadcast station applications under the prior ownership rules.

Licensees/permittees use FCC Form 301 to apply for authority to construct a new commercial AM, FM, or TV broadcast station or to make changes to the existing facilities of such a station. In addition, FM licensees/permittees may use Form 301 to request upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels without first submitting a petition for rulemaking. Applicants using this ''one step'' process must demonstrate that a suitable site exists, which complies with allotment standards, *i.e.*, minimal distance separation and city-grade coverage, and is suitable for tower construction. Commercial broadcast licensees must file Form 301 for a construction permit to receive

authorization to commence DTV operation. This application may be filed anytime after receiving the initial DTV allotment but must be filed before mid-point in a particular applicant's required construction period. The Commission will consider these applications as minor changes in facilities. Applications will not have to supply full legal or financial qualification information. Under 47 CFR 73.3580, applicants must publish a notice in a local paper of general circulation when filing for new or major changes in facilities. A copy of the public notice is to be kept with the application in the station's public file.

OMB Control Number: 3060–0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License.

Form Number: 314.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 1,591.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 2,547 hours.

Total Annual Costs: $12,356,203.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On September 3, 2003, the United States Court of Appeals for the Third Circuit issued an *Order* staying the effectiveness of the new media ownership rules adopted by the Commission on June 2, 2003. (Report and Order, MB Docket 02–2777 and MM Docket 01–235, 01–317, and 00–244, and Notice of Proposed Rulemaking, *In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996.*) 68 FR 46285, August 5, 2003. The Court ordered ''that the prior ownership rules remain in effect pending resolution of these proceedings.'' *Prometheus Radio Project* v. *FCC*, No. 03–3388 (3d Cir. Sept. 3, 2003) (*per curiam*). The Court's Order requires that the Commission process broadcast station applications under the prior ownership rules.

Applicants must file FCC Form 314 and applicable exhibits/explanations when applying for consent to assignment of an AM, FM, or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated.

Under 47 CFR 73.3580, applicants must publish a notice in a local paper of general circulation when filing for assignment of all licenses/permits. A copy of the notice is to be kept with the application in the station's public file. Additionally, an applicant for assignment of license must broadcast the same notice from the station in the second week immediately following the tendering for the application filing. On April 4, 2000, the Commission adopted a Report and Order in MM Docket 95–31, *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants.* This Report and Order adopted new procedures to select among competing applicants for noncommercial educational (NCE) broadcast channels. The new procedures use points to compare objective characteristics whenever there are competing applications for full-service radio or television channels reserved for NCE use. The new procedure established a four-year holding period of on-air operations for license approved as a result of evaluations in a point system. FCC Form 314 has been revised to reflect the new policy and to require stations authorized under the point system, which have not operated for a four-year period, to submit with their applications an exhibit demonstrating compliance with 47 CFR 73.7005. The FCC staff use the data to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest is served by grant of the application.

OMB Control Number: 3060–0032.

Title: Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315.

Form Number: 315.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 1,591.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 2,547 hours.

Total Annual Costs: $12,356,203.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On September 3, 2003, the United States Court of Appeals for the Third Circuit issues an *Order* staying the effectiveness of the new media ownership rules adopted by the Commission on June 2, 2003. (Report and Order, MB Docket 02–2777 and MM Docket 01–235, 01–317, and 00–244, and Notice of Proposed Rulemaking, *In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996.*) 68 FR 46285, August 5, 2003. The Court ordered ''that the prior ownership rules remain in effect pending resolution of these proceedings.'' *Prometheus Radio Project* v. *FCC*, No. 03–3388 (3d Cir. Sept. 3, 2003) (*per curiam*). The Court's Order requires that the Commission process broadcast station applications under the prior ownership rules.

Applicants must file FCC Form 315 and applicable exhibits/explanations when applying for transfer of control of a corporation holding an AM, FM, or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated.

Under 47 CFR 73.3580, applicants must publish a notice in a local paper of general circulation when filing all applications for transfer of control any license/permit. A copy of the public notice is to be kept with the application in the station's public file. Additionally, an applicant for transfer of control of license must broadcast the same notice from the station in the second week immediately following the tendering for the application filing.

On April 4, 2000, the Commission adopted a Report and Order in MM Docket 95–31, *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants.* This Report and Order adopted new procedures to select among competing applicants for noncommercial educational (NCE) broadcast channels. The new procedures use points to compare objective characteristics whenever there are competing applications for full-service radio or television channels reserved for NCE use. The new procedure established a four-year holding period of on-air operations for license approved as a result of evaluations in a point system. The FCC Form 315 was revised to reflect the new policy and to require stations authorized under the point system, which have not operated for a four-year period, to submit with their applications an exhibit demonstrating compliance with

47 CFR 73.7005. The FCC staff use the data to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest is served by grant of the application.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15865 Filed 7–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 28, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 13, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0034.

Title: Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340.

Form Number: FCC 340.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 668.

Estimated Time per Response: 2 to 4 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 2,158 hours.

Total Annual Cost: $7,071,746.

Privacy Impact Assessment: Yes.

Needs and Uses: FCC 340 is used to apply for authority to construct a new noncommercial educational FM, TV, and DTV broadcast station, or to make changes in the existing facilities of such a station. The FCC 340 is to be used for channels that are reserved exclusively for noncommercial educational use and on non-reserved channels if the only applicants competing propose to build NCE stations. For existing authorized analog stations to receive authorization for commencement of DTV operation, noncommercial educational broadcast licensees operating on a reserved channel must file FCC Form 340 for a construction permit. This application may be filed anytime after receiving the initial DTV channel allotment, but must be filed before the mid-point in a particular applicant's required construction period. The Commission will consider these applications as minor changes in facilities. Applicants do not have to supply full legal or financial qualification information. In addition, applicants for a newly allotted DTV channel reserved for noncommercial educational use(s) must also file the FCC Form 340.

On February 28, 2001, the FCC released a Memorandum Opinion and Order, *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants* (MO&O), MM Docket No. 95–31, FCC 01–64. The MO&O established a point system to compare objective characteristics of applicants for full-service radio or television stations on channels reserved for NCE use and on non-reserved channels if the only applicants competing propose to build NCE stations. The Commission has used the auction procedures to select among mutually exclusive commercial applications on non-reserved (commercial) channels. The MO&O, by establishing the point system, also resolved the ''supplement issue'' for those noncommercial stations that had previously filed pending applications filed before the Commission, but which were filed without point information (because the point system didn't exist when the applications were filed). These systems were required to file a ''supplement'' to their application providing the point information. Most applicants who had requested mutually exclusive NCE proposed for the reserved band have been required to supplement or settle their request(s) by 2001. A small number of these applicants remain, who were never subject to this requirement. These applicants are still required to supplement their Form 340 applications. The Commission will issue a public notice announcing the procedures to be used in this process at a future date, yet unknown.

Under 47 CFR 73.3580, applicants must publish a notice in a newspaper of general circulation of the filing of all applications for new or major changes in facilities for at least twice a week for two consecutive weeks in a three-week period. This notice must be completed within 30 days of the tendering of the application. A copy of this notice and the applications must be placed in the station's public inspection file.

OMB Control Number: 3060–0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form Number: FCC 394.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, local, or tribal government.

Number of Respondents: 1,000.

Estimated Time per Response: 2 to 3 hours.

Frequency of Response: One-time and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 2,700 hours.

Total Annual Cost: $2,654,500.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster

broadcast station, or to make changes in the existing facilities of such stations. Under 47 CFR section 73.3580, applicants must give notice of their applications for new or major changes in facilities in a local newspaper within 30 days, and a copy of both the notice and the application must be placed in the station's public inspection file. On April 4, 2000, the Commission adopted a Report and Order, *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95–31. This Report and Order adopted new procedures to select among competing applicants for noncommercial educational (NCE) broadcast stations. Among other things, this Report and Order instituted a point system to compare objective characteristics whenever there are competing applications for NCE translator stations. FCC Form 349 was revised to incorporate these newly adopted procedures. Most applicants for NCE translator stations have been required to supplement or settle their request(s) by 2001. A small number of these applicants remain, who were never subject to this requirements. These applicants are still required to supplement their Form 349 applications. The FCC will issue a public notice announcing the procedures to be used in this process at a future date, yet unknown.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15866 Filed 7–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 15, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before August 13, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0978.

Title: Compatibility with E911 Emergency Calling Systems, Fourth Report and Order.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,000 respondents, 16,000 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: Quarterly reporting requirement.

Total Annual Burden: 32,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection of information is needed to ensure persons with hearing and speech disabilities using text telephone (TTY) devices will be able to make 911 emergency calls over digital wireless systems. The Commission will use the information in the quarterly TTY reports to keep track of the carriers' progress in complying with E911 TTY requirements and also to monitor the progress technology is making towards compatibility with TTY devices.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15867 Filed 7–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 24, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before September 13, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0800.

Title: FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control.

Form No.: FCC Form 603.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or household, business or other for-profit, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 32,151.

Estimated Time per Response: 1.75 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 36,171 hours.

Total Annual Cost: $7,073,000.

Privacy Act Impact Assessment: Possible Impact.

Needs and Uses: Form 603 is a multi-purpose form used to apply for approval of assignment or transfer of control of licenses in the Wireless Radio Services. The data collected on this form is used by the FCC to determine whether the public interest would be served by approval of the requested assignment or transfer. This form is also used to notify the Commission of consummated assignments and transfers of wireless licenses that have previously been consented to by the Commission or for which notification but not prior consent is required. This form is used by applicants/licensees in the Public Mobile Services, Personal Communications Services, Private Land Mobile Radio Services, Broadcast Auxiliary Services, Fixed Microwave Services, Maritime Services (excluding ships), and Aviation Services (excluding aircraft). The purpose of this form is to obtain information sufficient to identify the parties to the proposed assignment or transfer, establish the parties basic eligibility and qualifications, classify the filing, and determine the nature of the proposed service. Various technical schedules are required along with the main form applicable to Auctioned Services, Partitioning and Disaggregation, Undefined Geographical Area Partitioning, Notification of Consummation or Request for Extension of Time for Consummation. This form is being revised to accommodate Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets; additional questions concerning the foreign ownership, waivers and fees; and clarify existing instructions for the general public as noted in the Communications Act of 1934, section 310(b)(4). There is no change to the estimated average burden or number of respondents.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15868 Filed 7–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 29, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 13, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0980.

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, *Retransmission Consent Issues*, CS Docket Nos. 00–96 and 99–363.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,600.

Estimated Time per Response: 1 to 5 hours (multiple responses).

Frequency of Response: On occasion and three year reporting requirements.

Total Annual Burden: 7,800 hours.

Total Annual Cost: $260,000.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On November 29, 2000, the FCC released a Report and Order, *In the Implementation of the Satellite Home Viewer Improvement Act (SHVIA): Broadcast Signal Carriage Issues, Retransmission Consent Issues,* CS Docket Nos. 99–363 and 00–96, FCC 00–417. In this Report and Order, the Commission required satellite television providers to provide local-into-local signals of broadcast television stations, while electing for compulsory must-carry or retransmission consent status. On September 5, 2001, the Commission released an Order on Reconsideration, CS Docket No. 00–96, FCC 01–249, which denied petitions for reconsideration. In addition, the Commission, on its own motion, clarified some of the requirements in the earlier Report and Order and amended the satellite broadcast signal carriage rules, 47 CFR section 76.66.

OMB Control Number: 3060–0981.

Title: Part 76, Multichannel Video and Cable Television Service Public File and Notice Rules.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities; and State, local or tribal government.

Number of Respondents: 10,800.

Estimated Time per Response: 30 minutes to 3 hours.

Frequency of Response: Recordkeeping and third party disclosure requirements; on occasion, semi-annual and annual reporting requirements.

Total Annual Burden: 43,200 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: Section 631 of the Communications Act, as amended, provides that at the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of (a) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information; (b) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made; (c) the period during which such information will be maintained by the cable operator; (d) the times and place at which the subscriber may have access to such information in accordance with section 631 (d); and (e) the limitations provided by section 631 with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under sections 631 (f) and (h) to enforce such limitations. This notice requirement appears in the Communications Act but not in the FCC cable television rules. The Report and Order, *1998 Biennial Review-Multichannel Video and Cable Television Service,* CS Docket No. 98–132, FCC 99–12, which was released on September 5, 2000, amended the Commission's cable television rules so that the notice requirement is now referenced in notes at the end of various rule sections. In addition, the Copyright Act requires that cable operators file, on a semi-annual basis, a statement of account with the Licensing Division of the Copyright Office, Library of Congress. The Report and Order amended the Commission's cable television rules so that this filing is now referenced in a note at the end of 47 CFR 76.1800.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15869 Filed 7–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–1493]

Wireless Telecommunications Bureau Announces Licensing and Interim Link Registration Process, Including Start Date for Filing Applications for Non-Exclusive Nationwide Licenses in the 71–76 GHz, 81–86 GHz, and 92–95 GHz

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Wireless Telecommunications Bureau (''WTB'' or ''Bureau'') announces the details of the licensing and interim link registration process, including the start date for filing applications for non-exclusive nationwide licenses in the 71–76, 81–86, 92–94.0 and 94.1–95 GHz bands.[1] The FCC directed and authorized WTB to issue public notices with details of the licensing and link registration process for these bands. This Public Notice provides details of the licensing and interim link registration process for these bands.

DATES: The start date for filing applications for non-exclusive nationwide licenses is June 21, 2004 and, the start date for licensees to register individual links under an interim registration process begins at 9 a.m. (e.d.t.) on July 19, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cheryl Black or Stephen Buenzow, Broadband Division, WTB, 717–338–2687 or questions regarding the application filing and link registration procedure outlined in the Public Notice may be directed to the ULS Hotline at 1–888–CallFCC Option #2.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice, DA 04–1463, released May 26, 2004, the full text of this Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A–257, 445 12th Street, SW., Washington DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC. The complete item is also available on the Commission's Web site at *http://www.fcc.gov/wtb.*

I. Background

On October 16, 2003, the Commission adopted a *Report and Order,* 69 FR 3257, January 23, 2004, establishing service rules to promote non-Federal Government development and use of the ''millimeter wave'' spectrum in the 71–76 GHz, 81–86 GHz and 92–95 GHz bands[2] on a shared basis with Federal Government operations. These bands are essentially undeveloped and available for use in a broad range of new products and services, including high-speed, point-to-point wireless local area networks and broadband Internet access. Highly directional, ''pencil-beam'' signal characteristics permit systems in these bands to be engineered in close proximity to one another without causing interference. Thus, the Commission adopted a flexible and innovative regulatory framework for the 71–95 GHz bands that would not require traditional frequency coordination among non-Federal Government users. Under this approach, the Commission will issue an unlimited number of non-exclusive nationwide licenses to non-Federal Government entities for the 12.9 gigahertz of spectrum allocated for commercial use. These licenses will serve as a prerequisite for registering individual point-to-point links. The 71–95 GHz bands are allocated on a shared basis with Federal Government users. Therefore, a licensee will not be authorized to operate a link under its non-exclusive nationwide license until the link is both (i) coordinated with the National Telecommunications and Information Administration (NTIA) with respect to Federal Government operations and (ii) registered as an approved link with the FCC (interim process) or third-party Database Manager (permanent process).

NTIA coordination. NTIA is developing an automated coordination mechanism that will allow non-Federal Government users and independent database managers (Database Managers) selected by the FCC[3] to use an Internet

[1] In a *Report and Order,* 69 FR 3257 (Jan. 23, 2004), the Commission adopted rules for both unlicensed (part 15) and licensed (part 101) use of portions of these bands. The instant Public Notice concerns licensed use of the bands, which involves all of the bands except for 100 megahertz of spectrum at 94.0–94.1 GHz. For convenience only, we refer to the licensed spectrum herein as ''the bands,'' ''the Millimeter Wave 70/80/90 GHz Radio Service,'' or ''the 71–95 GHz bands''; such references do not include 94.0–94.1 GHz.

[2] On February 23, 2004, The Wireless Communications Association International, Inc. filed a petition for reconsideration of certain aspects of the *Report and Order.* That petition will be handled by separate order, and the issuance of this Public Notice is not intended to prejudge or resolve any of the issues raised by the petitioner.

[3] *See* Public Notice, DA 04–672 (WT Docket No. 02–146) released March 12, 2004 (*Database Manager PN*).

site to determine whether a given non-Federal Government link has any potential conflict with Federal Government users. However, until that database is operational, NTIA coordination will occur using the existing process: licensees will file link registrations on the FCC's Universal Licensing System (ULS), which the FCC will refer to NTIA's Interdepartment Radio Advisory Committee (IRAC) Frequency Assignment Subcommittee. Once NTIA's Web-based system is operational, it is anticipated that Database Managers will supply the necessary information directly to NTIA for frequency interference coordination with Federal Government entities. The automation is designed to streamline the administrative process for non-Federal Government users in the bands.

Link registration through ULS and Database Managers. Until the Commission selects Database Managers, licensees will register links through ULS. Thereafter, licensees will register links with Database Managers, who will develop and maintain a non-FCC database of link registrations to assist parties in planning new links to avoid interference.[4] In the event of an interference dispute, rights with regard to specific links will be established based on the date and time of link registration.

In the *Report and Order,* the Commission explained that the licensing and link registration process would be detailed in subsequent public notices.[5] Accordingly, the non-exclusive nationwide licensing process, the interim link registration process and general provisions for the permanent link registration process are set forth herein.

II. Non-Exclusive Nationwide License

A license for the Millimeter Wave 70/80/90 GHz Radio Service will consist of a non-exclusive nationwide license, combined with site-based links obtained through a link registration process. All interested parties must have a non-exclusive nationwide license prior to registering a link whether under the interim or permanent link registration processes described herein. The non-exclusive nationwide license does *not* authorize operation until a link is both (1) coordinated with NTIA and (2) registered.

Application Filing Process for Non-Exclusive Nationwide License

Applicants for non-exclusive nationwide licenses are encouraged to electronically file FCC Form 601 using the Universal Licensing System (ULS). Applicants can access the ULS Web site at *http://wireless.fcc.gov/uls.* Applicants must have an FCC Registration Number (FRN) in order to file applications and link registrations in ULS. If the applicant does not have an existing FRN, it must register and obtain an FRN prior to filing the license application.[6]

Applicants for non-exclusive nationwide licenses will be required to file FCC Form 601 Main Form and Schedule B. Applicants should specify that they are filing an application in the MM—Millimeter Wave 70/80/90 Radio Service and specify the purpose of the application as New (NE). When filing electronically, the ULS will automatically load FCC Form 601.[7] An FCC Form 601 Main Form is required for all filings and collects necessary administrative data to identify the filer, establishes the filer's basic eligibility and qualifications, and classifies the filing. It also contains the required certifications and signature block. An FCC Form 601 Schedule B must be included with the application for the initial non-exclusive nationwide license. Because the non-exclusive nationwide license serves as a prerequisite for registering links, an applicant will initially receive a single license for all available frequency bands (71–76, 81–86, 92–94.0, and 94.1–95 GHz). During the electronic filing process, FCC Form 601 Schedule B will be automatically pre-filled with the correct technical data, and cannot be changed; FCC Form 601 Schedule B is a view-only screen for this radio service.

Applications are assigned file numbers and all applications (and major amendments thereto) that are accepted for filing are listed on the Bureau's weekly public notice of such applications. An application may be granted at any time if the Bureau finds that it meets all of the Commission's requirements (*e.g.* meets qualification requirements, foreign ownership restrictions, payment obligations), except that certain applications will not be granted prior to the 31st day following the issuance of a Public Notice of the acceptance for filing of such application (see below).[8] When an application is granted, an authorization will be issued to the applicant, and the grant will be placed on the Wireless Telecommunications Bureau's Weekly Action Public Notice.

Notice: Applicants seeking to operate under more than one regulatory status may file one application for common carrier regulatory status and a second application for non-common carrier and/or private, internal regulatory status.

Applications to provide non-common carrier service or for private, internal communications (Codes ''N'' and ''P,'' respectively on FCC Form 601 Item 35) may be granted anytime after they are accepted for filing. Applications that include a request for common carrier regulatory status (Code ''C,'' FCC Form 601 Item 35) will *not* be granted prior to the 31st day following the issuance of a Public Notice of the acceptance for filing of such application.[9]

Example: On June 30, 2004, the Bureau releases the weekly Public Notice of applications filed between June 21–25, 2004, that are acceptable for filing. The 31st day following this public notice is Saturday, July 31, 2004, making Monday, August 2, 2004, the first day on which a common carrier application can be granted. A license is required to file link registrations. Given that July 19, 2004, is the starting date for filing link registrations, and that no common carrier licenses can be granted prior to August 2, 2004, applicants seeking to operate under more than one regulatory status may wish to file one application for common carrier regulatory status and a second application for non-common carrier and/or private, internal regulatory status, as applicable.[10]

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[4] The Database Managers will assist in resolution of interference disputes using the interference protection dates of the affected parties. (*See Database Manager PN* for more complete details of the responsibilities of the Database Managers.) If unsatisfied with the outcome of that process, and after 30 days have passed, a licensee may seek Commission assistance in resolution of the dispute. *Report and Order* at paragraph 58.

[5] *Report and Order* at paragraph 59. *See also* 47 CFR 101.1523(b).

[6] The FCC Registration Number (FRN) is not to be confused with the ''link registrations'' discussed in Section III of the instant Public Notice. Applicants can obtain an FCC Registration Number (FRN) using the Wireless Telecommunications Bureau Web site at *http://wireless.fcc.gov/* and select ''*CORES/Call Sign Registration*'' from the right hand menu under the heading of Licensing.

[7] Applicants must consult and follow FCC Form 601—Instructions.

[8] *See* 47 CFR 1.945(b)(c).

[9] *See id.* at § 1.945(b); *see also* 47 CFR 1.939(a)(2) (petitions to deny common carrier applications must be filed no later than 30 days after the date of the Public Notice listing such applications as accepted for filing).

[10] Ordinarily, in requesting authority to offer both common carrier and non-common carrier service, an applicant would choose to file a single FCC Form 601 and enter Codes C and N on it in response to Item 35. However, the entire application would be processed under the ''common carrier'' track, *i.e.,* the ''notice and 30-day waiting period'' of § 1.945(b), because system limitations preclude us from processing the non-common carrier request separately when filed on the same form as the common carrier request.

Modifications to Non-Exclusive Nationwide License

Modifications to the non-exclusive nationwide license will be limited to data on the FCC Form 601 Main Form. Any such modifications should be filed on FCC Form 601 and should specify the purpose of the filing as modification (MD). Modifications to FCC Form 601 Schedule B data will not be permitted. Modifications to the FCC Form 601 Main Form data will not affect the interference protection date for individual links registered under that license. License modifications must be filed independent of any filing involving registration of individual links.

Transfer and Assignment of Non-Exclusive Nationwide Licenses

Licensees may assign or transfer their non-exclusive nationwide license using FCC Form 603. Pursuant to the *Report and Order,* licensees will not be permitted to partition or disaggregate their non-exclusive nationwide licenses. Therefore, licensees will only be permitted to assign or transfer the entire geographic license. Any links registered under the non-exclusive nationwide license will remain associated with the license during a full assignment or transfer. However, at a date to be announced in the future by Public Notice, we will, pursuant to our delegated authority, *see* note, *supra,* permit licensees to assign individual links from one non-exclusive nationwide license to another.[11]

Applications May Be Filed Beginning June 21, 2004

Parties may file applications for non-exclusive nationwide licenses starting on June 21, 2004. Applications filed before June 21, 2004, will be dismissed.

III. Individual Link Registration and Coordination

A. Introduction

As noted above, the non-exclusive nationwide license is a required prerequisite for registering individual links. Therefore, individual links cannot be registered until a geographical (nationwide) license is obtained (see above).

In Appendix C of the *Report and Order*, the Commission specified certain technical parameters that would be required for link registration. The *Report and Order* also stated that the Commission would provide details regarding the licensing requirements and coordination with NTIA in a future Public Notice. Ongoing coordination with NTIA in developing the Federal Government/non-Federal Government coordination process has resulted in refinements to the required link data. Certain refinements will facilitate efficient coordination using NTIA's automated system. Specifically, it was determined that EIRP(dBm), Receiver Latitude (ddmmss.s), Receiver Longitude (dddmmss.s), Receiver Noise Figure (dB), and Polarization are needed. Other data elements were determined to be redundant and therefore will not be required, namely Bandwidth,[12] Path Distance, and Data Type.[13] Finally, Path Status, Proposed Date, and Inception Date will not be required because the filing date and IRAC coordination dates will automatically be recorded in ULS.

The process for link registration and coordination with NTIA prior to the implementation of NTIA's automated system and the appointment of third party database managers is referred to in this Pubic Notice as the ''interim link registration process.'' The process for link registration and coordination with NTIA subsequent to the implementation of NTIA's automated system is referred to in this Public Notice as the ''permanent link registration process.''

B. Interim Process for Link Coordination and Registration

Notice: During the interim process—all link registrations must be filed electronically (in ULS) using the process described below.

• *Effective Date for Interim Link Registration Process*

In the *Report and Order* the Commission specified that during the interim link registration process, licensees would be permitted to register links in ULS and coordination with NTIA would be accomplished through the existing IRAC process. Licensees may not initiate link registrations through ULS until after their non-exclusive nationwide license application is granted. ULS will be ready to accept electronic link registrations starting at 9:00 a.m. (EDT) on Monday, July 19, 2004. Registrations filed before that date and time will not be processed. You must have a non-exclusive nationwide license before initiating a link registration. (As discussed above, you can apply for a non-exclusive nationwide license starting on June 21, 2004.)

• *How To File Individual Link Registrations Under the Interim Process*

During the interim link registration process, individual links must be registered with the Commission in ULS. Links will be coordinated with NTIA through IRAC using the existing IRAC coordination process. FCC Form 601 has been revised to add Schedule M (Schedule for Link registration)[14] to collect the necessary data elements as set forth in the *Report and Order* and this Public Notice. To register a link, licensees must file electronically using FCC Form 601 Main Form and Schedule M. The FCC Form 601 Main Form should indicate a purpose of ''Register Link/Location'' (RL). A separate FCC Form 601 Main Form and Schedule M will be required for each proposed link. During the interim process, all link registrations must be filed electronically in ULS. Link registrations will not be placed on Public Notice as a matter of routine unless they raise a matter of public significance, *e.g.*, environmental concerns.[15] If the proposed link requires environmental assessment, is located in a quiet zone, or is in an area subject to international coordination, the licensee should specify so on the FCC Form 601 Schedule M and provide any necessary information in accordance with the instructions and FCC Rules. The ULS electronic form performs edit checks as information is entered. If ULS finds an error, it may not allow the application to be submitted until the error has been corrected.

When an individual link has been successfully coordinated with IRAC and is approved the licensee will be notified by letter that their link registration has been posted in ULS as accepted. Individual link registrations will be available for public inspection through ULS electronically. However, the printed copy of the non-exclusive nationwide license will not be updated to reflect link registrations and will not be re-issued when individual links are registered with that call sign.

• *How To Coordinate Links With NTIA/IRAC During the Interim Process*

The FCC will coordinate links with NTIA/IRAC. Licensees need not provide any special information or take any

[11] *See* discussion of transfer and assignment of registered links, *infra.*

[12] Transmitter Emission Bandwidth will be collected as part of the Transmitter Emission Designator.

[13] Data Type will be collected as part of the Transmitter Emission Designator consistent with the ITU format for emission designators. *See also* § 2.201 of the Commission's Rules.

[14] Schedule M is the new FCC Schedule that must be used for link registration. The form may be accessed for electronic filing through ULS, downloaded from the FCC forms page at *http://www.fcc.gov/formpage.html*, or ordered from the Forms Distribution Center at 1–800–418–3676.

[15] *See, e.g.*, 47 CFR 1.933(a)(3) (categories of information of public significance include special environmental considerations as required by Part 1, FCC Rules).

special action other than filing the FCC Form 601 Main Form and Schedule M as described above. If during the NTIA/IRAC coordination process it is determined that additional information is required to complete that process, the link registration will be ''returned'' to the licensee. If the licensee provides the needed information within 60 days of the date of the ''return notice,'' it will keep its original filing date for that registration unless the new information modifies the link registration, in which case the filing date will be advanced to the filing date of the new information. If the licensee fails to timely provide the information within 60 days of the return notice, the link registration will be dismissed.

• *Interference Protection Date and Interference Dispute Resolution*

In establishing the link registration process, the Commission adopted the standard by which interference disputes are to be resolved. Specifically, the Commission stated that, ''[f]or the purpose of non-Federal Government licensee interaction with each other, instead of requiring prior coordination of all prospective links, we will institute the link registration mechanism * * * which will provide priority based on date/time of application in any cases in which interference may arise.'' Thus, during the interim link registration process, the date on which the FCC Form 601 Main Form and Schedule M are submitted to the Commission in a state acceptable for filing will be used as the first-in-time interference protection date while the application is coordinated with NTIA through the existing IRAC coordination process. If the link is cleared via the coordination process, interference protection will become effective based on the first-in-time date established by the aforementioned filing date of the FCC Form 601 Main Form and Schedule M. If at any time the link registration is found to be defective or cannot be successfully coordinated with IRAC, the link registration will be dismissed and the interference protection date rendered ineffective. If the applicant re-files its link registration request, the interference protection date will be established by the date that the new request is received at the Commission in a state acceptable for filing.

During the coordination process, licensees may be asked to provide additional information to facilitate coordination with NTIA. In these circumstances the licensee will be given 60 days to provide the requested information. If the licensee responds with the requested information within the required time frame, and does not make any changes to the data on FCC Form 601 Schedule M, the initial first-in-time interference protection date will be preserved.

Pursuant to our delegated authority set forth in the *Report and Order*, see note 5, *supra*, we will assign a new interference protection date whenever there is a change to the technical data on an individual link. In cases in which the modification does create new interference, the licensee whose links are already registered will be protected against the licensee who modified its links. This is consistent with the Commission's desire to ensure that the system of licensing and link registration adequately protects those that have diligently engineered their systems to bring service to the public unencumbered by either regulation or harmful interference.[16] To ensure an orderly, reliable and streamlined link registration system, we believe first-in-time protection rights can only be established and enforceable for a link that can or ultimately will be constructed. For example, we do not want a licensee arbitraging high value paths (such as in urban areas like New York City) by filing link registrations to preserve first in time protections against its competitors for those paths, and then later making conforming modifications to meet particular business needs. Further, even where modifications are necessary (for example, during the NTIA coordination process), we are concerned that a licensee may displace or compete with another licensee's first in time protection with even the most minor of changes to the technical parameters of a link. In cases in which the modification causes no new interference, the new interference protection date will have no practical effect on the licensee's first-in-time rights.

Should a licensee receive interference from another licensee, the licensee experiencing the harmful interference shall follow the interference resolution procedures outlined in 47 CFR § 101.105 of the Commission's Rules (*e.g.*, notify the licensee believed to be causing the interference and shall supply information describing its problem and supporting its claim). The licensee who has the earlier interference protection date is to be protected against later filed link registrations. The licensee causing the interference shall respond immediately and make every reasonable effort to identify and resolve the conflict. Prior links shall be protected in accordance with the interference criteria specified in § 101.147(z)(2). Licensees are encouraged to resolve the harmful interference before seeking resolution from the Commission.

• *Modifications and Amendments To Link Registrations*

Notice: Any change to technical data on a link registration will result in a new interference protection date.[17]

Licensees must electronically file FCC Form 601 Main Form and Schedule M to modify the technical data on an individual link registration. The FCC Form 601 Main Form should indicate a purpose of ''Register Link/Location'' (RL). On FCC Form 601 Schedule M, the licensee should specify the action as Modify (M) and identify the link registration that is being changed. To amend the technical data on an individual link registration which has not yet been approved, licensees will be required to file FCC Form 601 Main Form and Schedule M. The FCC Form 601 Main Form should indicate a purpose of Amendment (AM) and identify the file number of the pending link registration filing that is being changed. Under electronic filing, the previously entered data from FCC Form 601 Schedule M will be displayed and the licensee will be allowed to change the data.

• *Transfer and Assignment of Registered Links*

Transfer or assignment of a non-exclusive nationwide license, unless otherwise specified, will include all links registered under that call sign. The ability to file for partial assignment of individual link registrations will not be available in ULS on July 19, 2004, the date that ULS will be ready to accept link registration filings from licensees. However, by future Public Notice, the Bureau will announce, pursuant to its delegated authority, *see* note, *supra*, procedures for assignment of individual link registrations from one non-exclusive nationwide call sign to another.

C. Permanent Process for Link Coordination and Registration

Under the permanent process, link registrations will be made on a non-FCC registration database and NTIA will

[16] In the *Report and Order*, the Commission stated that, ''The overarching purpose of our requirements * * * concerning link construction, modification, and discontinuance, is to ensure that spectrum is put to use and to maintain the integrity of the information in the relevant databases by correctly reflecting the actual record concerning these issues.'' *Id.* at paragraph 80. Notably, in establishing both the construction and loading deadlines, the Commission barred the use of the initial link registration date for interference protection where the licensee fails to meet its regulatory obligations. *Id.* at n.204 and paragraph 81.

[17] *See* ''Interference Protection Date and Interference Dispute Resolution,'' *supra.*

have an automated coordination system. Three things must occur before the permanent process can become effective. First, the Database Managers must be selected. Second, the Database Managers must have the registration database system completed. Third, NTIA's automated coordination system must be operational. In this connection, the following is a general update on the status of these endeavors.

The Bureau is reviewing four proposals, and comments thereto, submitted in response to the *Database Managers PN*. WTB will designate one or more Database Managers, and such designation(s) will take effect upon the execution by such Database Manager(s) and the WTB of a Memorandum of Understanding that will, among other things, establish a timeline for implementation of the registration database. Thereafter, the Bureau will announce by public notice the names and addresses of the selected Database Managers and the starting date for registering links through the Database Manager(s).

NTIA is in the process of developing its automated coordination system, which will enable near real time coordination of non-Federal Government links with Federal Government operations. As indicated in the *Report and Order*, it is anticipated that NTIA will have the initial version of their automated system operational within four months of an agreement on the framework of the coordination procedure. After the permanent process becomes effective, links must be coordinated with NTIA through NTIA's automated system. The technical parameters of the proposed link will be entered into NTIA's automated system and NTIA's automated system will give either a green light or a yellow light based on the proposed parameters. If the proposed link receives a green light, then the licensee can begin or complete its link registration process through a Database Manager, and with limited exceptions [18] no filing with the Commission is necessary and the Database Manager will post the link registration on the non-FCC registration database. If the proposed link receives a yellow light, an FCC Form 601 and Schedule M will need to be filed with the Commission. In the case of a yellow light, the link will require further coordination with NTIA through the existing IRAC process. By comparison, during the interim process, the FCC will coordinate every link through the existing NTIA/IRAC process.

The effective date and additional details of the permanent process described herein will be announced by future Public Notice after the prerequisites discussed above have been completed.

IV. Filing and Regulatory Fees

- *Applications Associated With Nationwide, Non-exclusive License*
- *Link Registrations on ULS During the Interim Process*

The 70–80–90 GHz bands are licensed for microwave point-to-point operations (common carrier or private operational fixed) which are subject to filing fees under § 1.1102 and regulatory fees under §§ 1.1152 or 1.1154, as applicable.[19] Certain applicants are exempt from filing and/or regulatory fees. Nonexempt applicants for new, non-exclusive nationwide licenses will be subject to microwave service filing and regulatory fees as follows:

- New license applications must use fee type code CJPR.[20] Currently, the combined fee is $470.
- Modification of license applications must use fee code CJPM. Currently, the filing fee is $220.
- Assignments of Authorization and Transfers of Control of license applications must use fee code CCPM for the first call listed on the application and CAPM for each additional call sign listed. Currently, the filing fee is $80 for the first call sign and $50 for each additional call sign.
- Individual link registrations on ULS are not subject to a filing fee.

Notice: On or after September 1, 2004, applicants and licensees must check the Wireless Telecommunications Bureau Fee Guide for the current fees.[21]

V. Equipment Authorization/ Verification Procedures

Rules relating to marketing of radio frequency devices and equipment authorization procedures contained in part 2, subparts I and J, respectively, apply to licensed and unlicensed equipment operating in the 71–95 GHz bands.

[18] Filing with the Commission is required even in the event of a green light when the application requires environmental assessment, is located in a quiet zone, or is in an area subject to international coordination.

[19] See ''Wireless Telecommunications Bureau Fee Filing Guide'' Effective September 11, 2003 (*http://www.fcc.gov/Forms/Form1070/2003/2003feeguide.pdf*).

[20] The filing and regulatory fees for new or modified common carrier and private operational fixed microwave are the same; we are requiring all feeable applications to specify common carrier fee codes for administrative convenience. Applicants identify their actual regulatory status on Form 601, Item 35.

[21] See *http://www.fcc.gov/fees/appfees.html* and click on the link to the 2004 Wireless Telecommunications Bureau Fee Filing Guide, or call 1–888–225–5322, Option 2.

Federal Communications Commission.

Joel Taubenblatt,

Chief, Broadband Division.

[FR Doc. 04–15870 Filed 7–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 28, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. William B. Greene, Jr., Gray, Tennessee; to retain control of the outstanding common stock of Paragon Commercial Corporation, Raleigh, North Carolina, and thereby indirectly retain voting shares of Paragon Commercial Bank, Raleigh, North Carolina.

Board of Governors of the Federal Reserve System, July 8, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–15952 Filed 7–13–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Banco Bilbao Vizcaya Argentaria, S.A., Bilbao, Spain, BBVA International Investment Corporation, Hato Rey, Puerto Rico, Grupo Financiero BBVA Bancomer, S.A. de C.V., Mexico City, Mexico, BBVA Bancomer, S.A., Mexico City, Mexico, and BBVA Bancomer Financial Holdings, Inc., Houston, Texas; to become bank holding companies by acquiring 100 percent of the voting shares of Valley Bank, Moreno Valley, California.

In connection with this application, Applicants also have applied to engage *de novo* in the following activities that have been previously approved by Board order: (i) domestic and international money transmission (Popular, Inc., 84 Fed. Res. Bull. 481 (1998)(Popular) and Norwest Corp., 81 Fed. Res. Bull. 974 (1995) and 81 Fed. Res. Bull. 1139 (1995)), (ii) check cashing (Popular and Midland Bank, PLC, 76 Fed. Res. Bull. 860, 863 (1990)), and (iii) bill payments, (Popular and BancOne Corp., 80 Fed. Res. Bull. 139 (1994)), and to engage in (iv) issuing and selling money orders, traveler's checks, and prepaid telephone cards, pursuant to section 225.28(b)(13), and (v) buying and selling foreign exchange, pursuant to sections 225.28(b)(7)(v) and 225.28(b)(8)(A) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Capital City Bank Group, Inc., Tallahassee, Florida; to acquire 100 percent of the voting shares of Farmers & Merchants Bank, Dublin, Georgia.

2. First National Bankers Bankshares, Inc., Baton Rouge, Louisiana; to acquire 100 percent of the voting shares of Alabama Bankers Bank, Birmingham, Alabama (in organization).

3. BancTenn Corp., Kingsport, Tennessee; to acquire up to 20 percent of the voting shares of Paragon Commercial Corporation, Raleigh, North Carolina, and thereby indirectly acquire voting shares of Paragon Commercial Bank, Raleigh, North Carolina.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. German American Bancorp, Jasper, Indiana; to acquire 9.9 percent of the voting shares of American Community Bancorp, Inc., Evansville, Indiana, and thereby indirectly acquire voting shares of Bank of Evansville, N.A., Evansville, Indiana.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. JSA Family Limited Partnership, Jane Austin Chapman Limited Partnership, and Austin BanCorp, Inc., all of Jacksonville, Texas; to acquire 100 percent of the voting shares of First National Bank, Bullard, Texas.

Board of Governors of the Federal Reserve System, July 8, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–15951 Filed 7–13–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 4, 2004

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 4, 2004.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1 percent.

By order of the Federal Open Market Committee, July 2, 2004.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 04–15953 Filed 7–13–04; 8:45 am]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee meeting on May 4, 2004, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (e.d.t.); July 19, 2004.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice; correction.

SUMMARY: The Federal Retirement Thrift Investment Board published a notice in the **Federal Register** on Friday, July 9, 2004, Vol. 69, No. 131, page 41488, in the third column. Please add the following under Parts Closed to the Public:

7. Procurement.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 12, 2004.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 04–16089 Filed 7–12–04; 1:57 pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through September 30, 2007 the current PRA clearance for information collection requirements contained in (1)

the Rule Concerning Disclosure of Written Consumer Product Warranty Terms and Conditions; (2) the Rule Governing Pre-Sale Availability of Written Warranty Terms; and (3) the Informal Dispute Settlement Procedures Rule. (OMB Control Numbers 3084–0111, 3084–0112, and 3084–0113, respectively, ''Warranty Rules,'' collectively). These clearances expire on September 30, 2004.

DATES: Comments must be submitted on or before September 13, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Warranty Rules: Paperwork Comment, P044403'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Carole Danielson, Investigator, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3115.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Warranty Rules.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Warranty Rules implement the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (''the Act''), which governs written warranties on consumer products. The Act directed the FTC to promulgate rules regarding the disclosure of written warranty terms and conditions, rules requiring that the terms of any written warranty on a consumer product be made available to the prospective purchaser before the sale of the product, and rules establishing minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty. Pursuant to the Act, the Commission published the instant three rules.[2]

Consumer Product Warranty Rule (''Warranty Rule''): The Warranty Rule, 16 CFR 701, specifies the information that must appear in a written warranty on a consumer product. It sets forth what warrantors must disclose about the terms and conditions of the written warranties they offer on consumer products that cost the consumer more than $15.00. The Rule tracks the disclosure requirements suggested in Section 102(a) of the Act,[3] specifying information that must appear in the written warranty and, for certain disclosures, mandates the exact language that must be used. The Warranty Rule requires that the information be conspicuously disclosed in a single document in simple, easily understood language. In promulgating this rule, the Commission determined that the items required to be disclosed are material facts about product warranties, the non-disclosure of which would be deceptive or misleading.[4]

The Rule Governing Pre-Sale Availability of Written Warranty Terms (''Pre-Sale Availabilty Rule'): In accordance with Section 102(b)(1)(A) of the Act, the Pre-Sale Availability Rule, 16 CFR 702, establishes requirements for sellers and warrantors to make the text of any written warranty on a consumer product available to the consumer before sale. Following the Rule's original promulgation, the Commission amended it to provide sellers with greater flexibility in how to make warranty information available.[5]

Among other things, the Rule requires sellers to make the text of the warranty readily available either by (1) displaying it in close proximity to the product or (2) furnishing it on request and posting signs in prominent locations advising consumers that the warranty is available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements, and also sets out the methods by which warranty information can be made available before the sale if the product is sold through catalogs, mail order, or door-to-door sales.

Informal Dispute Settlement Rule: The Informal Dispute Settlement Rule, 16 CFR 703, specifies the minimum standards which must be met by any informal dispute settlement mechanism that is incorporated into a written consumer product warranty and which the consumer must use before pursuing legal remedies in court. In enacting the Warranty Act, Congress recognized the potential benefits of consumer dispute mechanisms as an alternative to the judicial process. Section 110(a) of the Act sets out the Congressional policy to ''encourage warrantors to establish procedures whereby consumer disputes

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] 40 FR 60168 (December 31, 1975).

[3] 15 U.S.C. 2302(a).

[4] 40 FR 60168, 60169–60170.

[5] 52 FR 7569 (March 12, 1987).

are fairly and expeditiously settled through informal dispute settlement mechanisms'' (''IDSMs'') and erected a framework for their establishment. As an incentive to warrantors to establish IDSMs, Congress provided in Section 110(a)(3), 15 U.S.C. 2310(a)(3), that warrantors may incorporate into their written consumer product warranties a requirement that a consumer must resort to an IDSM before pursuing a legal remedy under the Act for breach of warranty. To ensure fairness to consumers, however, Congress also directed that, if a warrantor were to incorporate such a ''prior resort requirement'' into its written warranty, the warrantor must comply with the minimum standards set by the Commission for such IDSMs. Section 110(a)(2) directed the Commission to establish those minimum standards.

The Informal Dispute Settlement Rule contains extensive procedural standards for IDSMs. These standards include requirements concerning the mechanism's structure (*e.g.*, funding, staffing, and neutrality), the qualifications of staff or decision makers, the mechanism's procedures for resolving disputes (*e.g.*, notification, investigation, time limits for decisions, and follow-up), recordkeeping, and annual audits. The Rule requires that warrantors establish written operating procedures and provide copies of those procedures upon request. The Rule's recordkeeping requirements specify that all records may be kept confidential or otherwise made available only on terms specified by the mechanism. However, the records are available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule, and the records relating to a specific dispute are available to the parties in that dispute. In addition, the audits and certain specified records are available to the general public for inspection and copying.

This rule applies only to those firms that choose to be bound by it by placing a prior resort requirement in their written consumer product warranties. Neither the Rule nor the Act requires warrantors to set up IDSMs. Furthermore, a warrantor is free to set up an IDSM that does not comply with this rule as long as the warranty does not contain a prior resort requirement.

Warranty Rule Burden Statement

Total annual hours burden: 34,000 hours. In 2001, the FTC estimated that the information collection burden of including the disclosures required by the Warranty Rule in consumer product warranties was approximately 34,000 hours per year. Because the Rule's paperwork requirements have not changed since then, and staff believes that the number of manufacturers affected is largely unchanged, staff concludes that its prior estimate remains reasonable. Moreover, because most warrantors would now disclose this information even if there were no statute or rule requiring them to do so, this estimate and those below pertaining to the Warranty Rule likely overstate the paperwork burden attributable to it. The Rule has been in effect since 1976, and most warrantors have already modified their warranties to include the information the Rule requires.

The above estimate is derived as follows. Based on conversations with various warrantors' representatives over the years, staff has concluded that eight hours per year is a reasonable estimate of warrantors' paperwork burden attributable to the Warranty Rule. This estimate includes the task of ensuring that new warranties and changes to existing warranties comply with the Rule. Staff continues to estimate that there are 4,241 manufacturing entities, which results in a burden figure of 33,928 hours (4,241 × 8 hours annually/manufacturer), rounded to 34,000.

Total annual labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The work required to comply with the Warranty Rule is predominantly clerical. Based on an average hourly rate of $10.75 for clerical employees and 34,000 total burden hours, the annual labor cost is approximately $365,500.

Total annual capital or other non-labor costs: The Rule imposes no appreciable current capital or start-up costs. The vast majority of warrantors have already modified their warranties to include the information the Rule requires. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, which providers would already have available for general business use.

Pre-Sale Availability Rule Burden Statement

Total annual hours burden: Staff estimates that the burden of including the disclosures required by the Pre-Sale Availability Rule in consumer product warranties is 2,760,000 hours, rounded to the nearest thousand.

In 2001, FTC staff estimated that the information collection burden of including the disclosures required by the Pre-Sale Availability Rule in consumer product warranties was approximately 2,760,000 hours per year. There has been no change in the Rule's paperwork requirements since the previous clearance request in 2001, and the staff has determined, based on its knowledge of the industry, that the number of manufacturers subject to the Rule remains largely unchanged. Staff continues to estimate that there are 6,552 large retailers, 422,100 small retailers, 146 large manufacturers, and 4,095 small manufacturers. Staff estimates that large retailers spend an average of 26 hours per year and small retailers an average of 6 hours per year to comply with the Rule. This yields a total burden of 2,702,952 hours for retailers. Large manufacturers spend an average of 52 hours per year and small manufacturers spend an average of 12 hours per year, for a total burden estimate of 56,732 hours. Thus, the combined total burden is 2,760,000 hours, rounded to the nearest thousand.

Since 2001, some online retailers have begun to post warranty information on their web sites, which should reduce their cost of providing the required information. However, this method of compliance is still evolving and involves a relatively small number of firms. Furthermore, those online retailers that also operate ''brick-and-mortar'' operations would still have to provide paper copies of the warranty for review by those customers who do not do business online. Thus, online methods of complying with the Rule do not yet appear to be sufficiently widespread so as to significantly alter the measure of burden associated with the Rule, although it is likely to decrease that burden in the future.

Total annual labor cost: The work required to comply with the Pre-Sale Availability Rule is predominantly clerical, *e.g.*, providing copies of manufacturer warranties to retailers and retailer maintenance of them. Assuming a clerical labor cost rate of $10.75/hour, the total annual labor cost burden is approximately $29,670,000.

Total annual capital or other non-labor costs: De minimis. The vast majority of retailers and warrantors already have developed systems to provide the information the Rule requires. Compliance by retailers typically entails simply filing warranties in binders and posting an inexpensive sign indicating warranty availability.[6] Manufacturer compliance entails providing retailers with a copy of the warranties included with their products.

[6] Although some retailers may choose to display a more elaborate or expensive sign, that is not required by the Rule.

Informal Dispute Settlement Rule Burden Statement

Total annual hours burden: 32,800 hours. The primary burden from the Informal Dispute Settlement Rule comes from its recordkeeping requirements that apply to IDSMs incorporated into a consumer product warranty. Disclosure requirements are much more limited. Staff estimates that recordkeeping and reporting burdens are 23,878 hours per year and the disclosure burdens are 8,955 hours per year. The total estimated burden imposed by the Rule is thus approximately 32,800 hours, rounded to the nearest thousand. This marks a decrease from staff's estimates in 2001. At that time, staff estimated that the recordkeeping and reporting burden was 24,625 hours per year and 9,235 hours per year for disclosure requirements or, cumulatively, approximately 34,000 hours.

Although the Rule's paperwork requirements have not changed since the FTC's immediately preceding PRA clearance request, the audits filed by the IDSMs indicate that fewer disputes were handled in 2002, which reduces the annual hours burden. The calculations underlying these new estimates follow.

Recordkeeping: The Rule requires that IDSMs maintain individual case files, update indexes, complete semi-annual statistical summaries, and submit an annual audit report to the FTC. The greatest amount of time to meet recordkeeping requirements is devoted to compiling individual case records. Because maintaining individual case records is a necessary function for any IDSM, much of the burden would be incurred in any event; however, staff estimates that the Rule's recordkeeping requirements impose an additional burden of 30 minutes per case. Staff also has allocated 10 minutes per case for compiling indexes, statistical summaries, and the annual audit required by the Rule, resulting in a total recordkeeping requirement of 40 minutes per case.

The amount of work required will depend on the total number of dispute resolution proceedings undertaken in each IDSM. The 2002 audit report for the BBB AUTO LINE states that, during calendar year 2002, it handled 22,996 warranty disputes on behalf of 14 manufacturers (including General Motors, Saturn, Honda, Volkswagen, Isuzu, and Nissan, as well as smaller companies such as Rolls Royce and Land Rover).[7] Industry representatives have informed staff that all domestic manufacturers and most importers now include a ''prior resort'' requirement in their warranties, and thus are covered by the Informal Dispute Settlement Rule. Therefore, staff assumes that virtually all of the 22,996 disputes handled by the BBB fall within the Rule's parameters. Apart from the BBB audit report, 2002 reports were also submitted by the two mechanisms that handle dispute resolution for Toyota, Chrysler, Ford, and Mitsubishi, all of which are covered by the Rule. The Ford IDSM states that it handled 7,482 total disputes. The audit of the Toyota IDSM handled 3,069 cases in 2002. The Mitsubishi audit shows 197 disputes handled. The audit of the Daimler-Chrysler IDSM shows 2,073 disputes. All of these disputes are covered by the Informal Dispute Settlement Rule. Based on the above data, staff estimates that the total number of disputes handled by the Rule's mechanisms total is 35,817. Thus, staff estimates the recordkeeping burden to be approximately 23,878 hours (35,817 disputes × 40 minutes ÷ 60 min./hr.).

Disclosure: The Rule requires that information about the mechanism be disclosed in the written warranty. Any incremental costs to the warrantor of including this additional information in the warranty are negligible. The majority of such costs would be borne by the IDSM, which is required to provide to interested consumers upon request copies of the various types of information the IDSM possesses, including annual audits. Consumers who have dealt with the IDSM also have a right to copies of records relating to their disputes. (IDSMs are permitted to charge for providing both types of information.) Given the small number of entities that have operated programs over the years, staff estimates that the burden imposed by the disclosure requirements is approximately 8,955 hours per year for the existing IDSMs to provide copies of this information. This estimate draws from the estimated number of consumers who file claims each year with the IDSMs (35,817) and the assumption that each consumer individually requests copies of the records relating to their dispute. Staff estimates that the copying would require approximately 15 minutes per consumer, including copies of the annual audit.[8] Thus, the IDSMs currently operating under the Rule have an estimated total disclosure burden of 8,955 hours (35,817 claims × 15 min. ÷ 60 min./hr.).

Total annual labor cost: $478,314.

Staff assumes that IDSMs use skilled clerical or technical support staff to compile and maintain the records required by the Rule at an hourly rate of $16; thus, the labor cost associated with the 23,878 recordkeeping burden hours is $382,048. Staff further assumes that IDSMs use clerical support at an hourly rate of $10.75 to reproduce records, and therefore that the labor costs of the 8,955 disclosure burden hours is approximately $96,266. Accordingly, the combined total labor cost for recordkeeping and disclosures is $478,314.

Total annual capital or other non-labor costs: $300,000.

Total capital and start-up costs: The Rule imposes no appreciable current capital or start-up costs. The vast majority of warrantors have already developed systems to retain the records and provide the disclosures required by the Rule. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, to which providers would already have access.

The only additional cost imposed on IDSMs operating under the Rule that would not be incurred for other IDSMs is the annual audit requirement. One of the IDSMs currently operating under the Rule estimates the total annual costs of this requirement to be under $100,000. Because there are three IDSMs operating under the Rule (Toyota, Mitsubishi, and Chrysler share the same IDSM, though each company is reported separately), staff estimates the total non-labor costs associated with the Rule to be three times that amount, or $300,000.[9] This extrapolated total, however, also reflects an estimated $120,000 for copying costs, which is accounted for separately under the category below. Thus, estimated costs attributable solely to capital or start-up expenditures is $180,000.

Other non-labor costs: $116,400 in copying costs. This total is based on estimated copying costs of 5 cents per page and several conservative assumptions or estimates. Staff estimates that the ''average'' dispute-related file is about 25 pages long and that a typical annual audit file is about 200 pages in length. For purposes of estimating copying costs, staff assumes that every consumer complainant (or approximately 35,817 consumers)

[7] So far as staff is aware, all or virtually all of the IDSMs subject to the Rule are within the auto industry.

[8] This estimate incorporates any additional time needed to reproduce copies of audit reports for consumers upon their request. Inasmuch as consumers request such copies in only a minority of cases, this estimate is likely an overstatement.

[9] The industry source did not break down this estimate by cost item. Staff conservatively included the entire $100,000 in its estimate of capital and other non-labor costs, even though some of this burden is likely already accounted for as labor costs.

requests a copy of the file relating to his or her dispute. Staff also assumes that, for about 7,163 (20%) of the estimated 35,817 disputes each year, consumers request copies of warrantors' annual audit reports (although, based on requests for audit reports made directly to the FTC, the indications are that considerably fewer requests are actually made). Thus, the estimated total annual copying costs for average-sized files is approximately $44,771 (25 pages/file × .05 × 35,817 requests) and $71,630 for copies of annual audits (200 pages/audit report × .05 × 7,163 requests), for total copying costs of $116,401, rounded to $116,400). Beginning with the 2002 audits, the FTC staff requested that the audits also be submitted in electronic format so they can be posted on the FTC Web site. This new procedure will likely reduce the number of hours and costs of copying the audits, because the IDSMs will be able to refer consumers to the FTC web site, where they can download and/or print out the information needed. Because this process has only recently begun (and because not all consumers have access to a computer), it is too soon to estimate the decrease in hours and costs that may result from the public posting of the audits.

William E. Kovacic,

General Counsel.

[FR Doc. 04–15923 Filed 7–13–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 042 3047]

Gateway Learning Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 6, 2004.

ADDRESSES: Comments should refer to ''Gateway Learning Corporation, File No. 042 3047,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Rich, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for July 7, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/07/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before August 6, 2004. Comments should refer to ''Gateway Learning Corporation, File No. 042 3047,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: consentagreement@ftc.gov.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Gateway Learning Corporation (''GLC''). GLC markets and sells products designed for children who are learning math and reading under the ''Hooked on Phonics'' brand name and trademark.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

This matter concerns alleged misrepresentations about how personal information collected from consumers through the proposed respondent's Web site would be used and alleged unfair practices in connection with proposed respondent's changes to its online privacy policy. The proposed respondent collects personal information from consumers on its Web site, including information from parents who purchase Hooked on Phonics products for their children. Such information includes the parent's first and last name, address, phone number, email address, purchase history, and his or her child's age range and gender. The proposed respondent maintains a privacy policy on its Web site that describes how it handles personal information collected from consumers.

The Commission's complaint charges that the proposed respondent falsely represented that information collected from consumers through its Web site would not be sold, rented, or loaned to third parties and that personal information about children under the age of thirteen would not be provided to any third party for any purpose. In fact, the complaint alleges, proposed respondent rented to third parties information about consumers and the age range and gender of their children. This information was used to send direct mail and make telemarketing calls to consumers.

The complaint also alleges that by posting a revised privacy policy containing material changes to its practices that were inconsistent with its original promise to consumers and retroactively applying such changes to previously-collected information, the proposed respondent engaged in an unfair practice. As alleged in the complaint, the proposed respondent collected personal information under a privacy policy that specifically stated that it did not sell, rent, or loan such information to third parties. It then changed its posted privacy policy to state that it may provide such information to third parties and, without providing any additional notice to consumers, applied this change to information collected under the earlier policy. Thus, without sufficient notice to consumers, the proposed respondent adopted a new policy and practice of sharing information with third parties that directly contradicted the promise made to consumers when the information was collected. The complaint alleges that this retroactive application of proposed respondent's revised privacy policy caused or is likely to cause substantial injury to consumers by subjecting them to unwanted direct mail and telemarketing calls. Further, such injury is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers.

Lastly, the complaint alleges that the proposed respondent misrepresented that it would notify consumers of material changes to its information practices, when in fact, it did not notify consumers of material changes to its information practices. Instead, the proposed respondent posted a revised privacy policy on its Web site without any indication that the policy had materially changed or what aspects of the policy had changed.

Part I of the consent order prohibits the proposed respondent, in connection with the collection of personal information from or about an individual, from misrepresenting (1) That it will not sell, rent, or loan to third parties such personal information; (2) that it will not provide to any third party personal information about children under the age of thirteen; (3) the manner by which it will notify consumers of changes to its privacy policy; or (4) the manner in which it will collect, use, or disclose personal information.

Part II of the order prohibits the proposed respondent from disclosing to any third party any personal information collected on its Web site prior to the date it posted its revised privacy policy permitting third-party sharing (June 20, 2003), unless it obtains the express affirmative (''opt-in'') consent of the consumers to whom such personal information relates. Part III of the order prohibits the proposed respondent, in connection with the posting in the future of any privacy policy that contains a material change from the previous version of the policy, from applying such changes to information collected from or about consumers before the date of the posting, unless it obtains the express affirmative (''opt-in'') consent of the consumers to whom such personal information relates. Part IV of the order requires the proposed respondent to pay $4,608 to the United States Treasury as disgorgement of its profits from renting customer data.

The remainder of the proposed order contains standard requirements that the proposed respondent: maintain copies of privacy statements and other documents relating to the collection, use or disclosure of personally identifiable information and to any efforts to obtain the consent of consumers and documents demonstrating such consent as required by Parts II and III of the order; distribute copies of the order to certain company officials and employees; notify the Commission of any change in the corporation that may affect compliance obligations under the order; and file one or more reports detailing its compliance with the order. Part IX of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

The proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondent. It is not the Commission's intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or entities associated with the conduct described in the complaint.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–15922 Filed 7–13–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension of Supplemental Form to the Financial Status Report for All AoA Title III Grantees

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 13, 2004.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Rm. 10235, Washington, DC 20503, Attn: Brenda Aguilar, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: *Margaret.Tolson@aoa.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

The Supplemental form to the Financial Status Report for all AoA Title III Grantees provides an understanding of how projects funded by the Older Americans Act are being administered by grantees, in conformance with legislative requirements, pertinent Federal regulations and other applicable instructions and guidelines issued by Administration on Aging (AoA). This information will be used for Federal oversight of Title III Projects. AoA estimates the burden of this collection of information as follows: 56 State Agencies on Aging respond semiannually which should be an average burden of 1 hour per State agency per submission.

Dated: July 9, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–15937 Filed 7–13–04; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Immediate Relief To Decrease Unsafe Injections in Selected Countries in Africa and the Caribbean Under the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: 04212.

Catalog of Federal Domestic Assistance Number: 93.943.

Key Dates:

Application Deadline: August 13, 2004.

Executive Summary: President Bush's Emergency Plan for AIDS Relief has called for immediate action to turn the tide of HIV/AIDS in Africa and the Caribbean. An important aspect of the President's bold vision is to prevent at least seven million HIV infections. This funding opportunity responds to the President's call for rapid, accountable, and sustainable action. An important aspect of the President's Emergency Plan for AIDS Relief (PEPFAR) is the providing of assistance to ensure the elimination of unsafe medical injections and other related unsafe medical practices, including occupational exposure to blood. The focus of this announcement is seven countries in Africa and the Caribbean heavily affected by HIV/AIDS: Botswana, Côte d'Ivoire, Haiti, Kenya, Rwanda, South Africa, and Tanzania.

Transmission of HIV and hepatitis in the health care setting can occur through unsafe injections and other unsafe medical practices, including occupational exposure to blood. The persons most at risk of infection through unsafe injections are the injection recipients, health care workers through contaminated needles and syringes, and the wider community through exposure to contaminated sharps waste.

Estimates of the global burden of disease from unsafe injections suggests that, in the year 2000, unsafe injections around the world accounted for five percent of HIV infections, 32 percent of hepatitis B virus infections, 40 percent of hepatitis C virus infections, 28 percent of liver cancers, and 24 percent of cirrhosis cases (World Health Organization (WHO), 2003). While such estimates have limitations, the data suggests that injection overuse and unsafe injection practices contribute towards contaminated, and often unnecessary, injections in the formal and informal health sector, and therefore constituting a significant mode of transmission for HIV and hepatitis. Concern about the negative outcomes of unsafe injections, including transmission of blood-borne pathogens, abscess formation, etc., has focused attention on scaling up interventions to stop the inappropriate and unsafe use of injection equipment.

This announcement provides funding to implement a National Injection Safety Plan in each of the seven countries, and expects demonstrable, measurable results within the first year of the award. An additional intent is to develop sustained indigenous capacity to continue these programs after the project ends.

Measurable outcomes of this program will be in alignment with the following performance goal for President Bush's Emergency Plan for AIDS Relief (PEPFAR): Prevent seven million HIV infections in 15 focus countries heavily afflicted by AIDS.

This initiative is a coordinated effort led by the Office of the Global AIDS Coordinator at the Department of State and involves various U.S. Federal Government agencies including the Department of State, Department of Health and Human Services (HHS), Department of Defense, the U.S. Agency for International Development, and the Peace Corps.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. Sections 241 (a) and 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Purpose: This announcement is intended to fund the rapid implementation of a safe-injection program that covers the entire population of each country, using each country's National Injection Safety Plan. The focus of this announcement is seven countries in Africa and the Caribbean heavily affected by HIV/AIDS: Botswana, Côte d'Ivoire, Haiti, Kenya, Rwanda, South Africa, and Tanzania. We expect demonstrable, measurable results within the first year of the President's Emergency Plan for AIDS Relief (PEPFAR). The implementation of these National Injection Safety Plans includes management, operations, and monitoring activities. The awardee will work to coordinate activities with the U.S. Government Mission, the Ministry of Health (MOH), and non-governmental organizations (NGOs), as appropriate, in each country.

All applicants should propose and budget for activities in all seven countries. The final determination of country assignment and funding will be determined at the time of award.

This funding announcement is intended to build on work recently performed during the initial rapid implementation of safe-injection activities under PEPFAR. The principal tasks of that rapid implementation phase were as follows:

1. Perform an initial assessment of the current injection practices within each country.

2. Develop a National Injection Safety Plan for the safe and appropriate use of injections.

3. Design and field-test a project to enhance injection safety in selected area(s) of each country that would address improving provider skills, improve procurement and management of safe injection equipment and supplies, increase managers' awareness and skills, and advocate for reducing demand for injections and knowledge about injection safety among the general public.

4. Develop and implement an advocacy strategy for wider public understanding and support for the development of the National Injection Safety Plan.

Measurable outcomes of the program will be in alignment with the priorities of PEPFAR, a five-year initiative to turn the tide in combating the global HIV/AIDS pandemic. The PEPFAR is intended to address the goal of

preventing seven million new infections (60 percent of the projected new infections in the target countries). By addressing injection safety, PEPFAR can help to reduce the spread of HIV and other infectious diseases and reduce the fear of infection among health care workers, thereby lessening stigma among health care workers and discrimination against people living with HIV/AIDS.

Activities: Awardee activities for this program are as follows: Using each country's National Injection Safety Plan to be provided by HHS/CDC, the awardee(s) will expand the piloted activities to implement an injection-safety program that covers the total population of each country. The awardee will implement a program that aims to improve injection practices through the following components: (a) Training, support, and capacity-building of health care providers, as well as program and facility managers; (b) improving logistics supply and distribution systems that ensure availability of safe injection equipment; (c) reducing the frequency of unnecessary injections through advocacy and behavior change; and (d) management of sharps waste.

1. Training, Support, and Capacity

- Train and educate health care workers in safer medical practices, including safe injection practices, universal precautions, selection of appropriate waste-management options, and decreasing unnecessary medications, particularly injections.
- Develop and/or update institutional service-delivery policies, standards, guidelines, job descriptions, monitoring tools, etc., to reflect management practices in safe injections and in the waste management of sharps waste (in accordance with national or international standards).
- Assist and train health care workers and logisticians in safe-injection commodity forecasting, financing, procurement, logistics, and supply management to ensure that both sterile, single-use injection devices for injection and reconstitution and safety boxes are available in health care facilities in sufficient quantities for the number of injections administered.
- Advise and assist program managers and facility administrators to direct, supervise and monitor activities to improve injection safety within their areas.
- Develop a mechanism to review progress and lessons learned between the National Injection Safety Plan group and personnel from the pilot project.

2. Equipment, Supplies, and Commodity Management

- Procure appropriate commodities for safe injection practices and ensure that all health care facilities have sufficient quantities of all commodities, including single-use injection equipment, gloves, diluent, soap, and safety boxes, preferably using existing distribution systems, when appropriate.
- Develop and strengthen existing systems for reliable commodity management, including selection, forecasting, procurement, and distribution, of injection equipment matched with needs for injectable medications and safety boxes in sufficient quantities for the number of injections administered.
- Ensure ''bundling'' of injectable vaccines, injectable contraceptives, and tuberculosis medicines in donor-supported programs with single-use needles and syringes that include reuse-prevention features and safety boxes.
- To decrease unnecessary injections, ensure oral formulations of commonly used medications are available at the health facilities. This might require revision of the essential drug list.
- Ensure inclusion of injection equipment on essential drug lists on a facility and/or national level.

3. Reducing Unnecessary Injections Through Advocacy and Behavior Change

- Using each country's National Injection Safety Plan, the awardee(s) will attempt to increase public support for injection safety among the main target audiences, which include: program managers, health facility administrators, professional associations, health workers, pharmacies, training institutions including medical schools, and the general public.
- The awardee will work with non-governmental organizations NGOs to integrate community-based activities to decrease the use of unsafe injections and increase knowledge of injection safety.

4. Sharps Waste Management

- Develop and strengthen systems to support proper disposal of sharps at the level of this intervention. (The awardee would not directly support capital costs for waste management. The awardee's role would be limited to technical assistance in assessment, planning and leveraging support from other external agencies for items such as incinerators.) This should be done in accordance with national policies for safe management of health care waste, if such a policy exists. If such a policy does not exist, these activities should be done in accordance with international standards (*http://www.injectionsafety.org* and the SIGN Injection Safety Toolkit).
- Forecast and provide sufficient quantities of puncture-proof sharps containers (*e.g.* safety boxes) and related materials, such as kerosene, matches for burning, etc., to meet the disposal needs of injection equipment across the curative, immunization, and contraceptive sectors within the institution. In a cooperative agreement, HHS/CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. HHS/CDC will work under the guidance and supervision of the Office of the Global AIDS Coordinator at the Department of State.

HHS/CDC activities for this program are as follows:

- Provide scientific and technical assistance in refining the operational plan.
- Provide ongoing technical assistance in addressing problems encountered in implementing your plan.
- Assist in assessing program operations and in evaluating overall effectiveness of your program.
- Staff in both headquarters (HHS/CDC Atlanta, HHS/CDC in country, and the HHS Office of Global Health Affairs in Washington) and in the designated countries will assure that other related U.S. Government (USG) activities are well coordinated with national programs in each country.

II. Award Information

Type of Award: Cooperative Agreement. HHS/CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: FY 2004.

Approximate Total Funding: $7,000,000.

Approximate Number of Awards: Two.

Approximate Average Award: $3,500,000 (This amount is for the first 12-month budget period, and includes direct costs).

Floor of Award Range: None.

Ceiling of Award Range: $7,000,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS/CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit and for-profit organizations may submit applications, such as:

- Public non-profit organizations;
- Private non-profit organizations;
- For-profit organizations;
- Universities; and
- Faith-based organizations.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must include a project narrative with your application forms. You must submit a narrative in the following format:

- Maximum number of pages: 30 (Note: Appendices and budget narrative are not included in the page total). If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- Font size: 12-point unreduced
- Double-spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative proposal should address activities to be conducted over the entire project period. Proposals should detail the implementation of the methodologies put forward in the program description, showing the phasing or dates by which planned activities would be carried out. The implementation plan shall include the following:

- Description of the need for National Injection Safety Plans in the seven countries and the anticipated outcome on HIV prevention.
- Description of the rationale and technical approach for expanding the use of proven best practices in injection safety in the following countries: Botswana, Côte d'Ivoire, Haiti, Kenya, Rwanda, South Africa, and Tanzania.
- Description of all planned activities in the first 12 months, including:

a. Sequence of tasks and location for intervention.

b. Timeframes for implementing each activity.

c. Involvement of alliances/partners/twinning.

d. Procurement and distribution plan, including estimated equipment needs and plans for use of existing country mechanisms.

e. Sustainability plan.

- Management Plan

a. Proposed lines of responsibility, authority, and communication through which tasks will be managed.

b. Procedure to ensure quality control and cost control.

- Organizational Structure and Staffing Plan, including:

a. Key personnel plan.

b. Other long and short-term staff required for implementing each activity.

c. Demonstrated capabilities, specific local experiences, education, and qualifications for each member of the key personnel plan.

d. List of alternates for key personnel plan.

e. Subcontractor staffing plans.

f. Plan for proposed project team to interface with the applicant's corporate structure, possible sub-contractors, and HHS/CDC's management structure.

- Monitoring and Evaluation Plan, showing how:

a. Outcomes will be measured.

b. Outcomes will contribute to results.

- The applicants shall provide information regarding their past experience in working with other organizations on similar types of projects.

Applicants may include additional information in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes the following:

- Curriculum Vitas or Resumes;
- Organizational Charts; and
- Letters of Support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: August 13, 2004.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If HHS/CDC receives your application after closing because of: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes

information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

HHS/CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may be used only for activities associated with decreasing unsafe injections.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- U.S. Government funds may be used for direct costs such as salaries; necessary travel; operating costs, including supplies, fuel, utilities, etc.; staff training costs, including registration fees and purchase and rental of training related equipment; and purchase of HIV-testing reagents, test kits, and laboratory equipment for HIV testing.
- No funds appropriated under this solicitation shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic use of any illegal drug.
- In accordance with 45 CFR Part 74.81, no HHS funds may be paid as profit to any recipient, even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any foreign recipient must have a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking, except that this requirement shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency, if such entity is a recipient of U.S. Government funds in connection with this document.

The following definitions apply for purposes of this clause:

- ''Sex trafficking'' means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).
- A ''foreign recipient'' includes an entity that is not organized under the laws of any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. Restoration of the Mexico City Policy, 66 FR 17303, 17303 (March 28, 2001).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, acknowledge that each certification to compliance with this section, ''Prostitution and Related Activities,'' are a prerequisite to receipt of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. In addition, all recipients must ensure, through contract, certification, audit, and/or any other necessary means, all the applicable requirements in this section, ''Prostitution and Related Activities,'' are met by any other entities receiving U.S. government funds from the recipient in connection with this document, including without limitation, the recipients' sub-grantees, sub-contractors, parents, subsidiaries, and affiliates. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All primary grantees that receive U.S. Government funds in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, ''[Recipient's name]

certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, ''Prostitution and Related Activities.''

Guidance for completing your budget can be found on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Applicants should budget for activities in all seven countries. The final determination of funding and country assignment will be determined at the time of award.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management–PA# 04212, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Current Capability (Total: 45 Points)

a. Experience in the area of safe injections (15 points)—Does the applicant and each of its partnering organizations have experience working in the area of medical injection safety in developing countries?

b. Experience in the area of infection-control practices (15 points)—Does the applicant and each of its partnering organizations have experience working in the area of infection control practices in developing countries?

c. Staffing and management (15 points)—Is the size of the organization adequate for the project? Is the current staffing and management capacity of the applicant adequate for the project?

2. Feasibility of Plan (Total: 40 Points)

a. Technical approach (6 points)—Is the technical approach sound and reasonable?

b. Staffing and management (8 points)—Is the proposed staffing and management plan reasonable?

c. Equipment and supplies management and distribution (8 points)—Does the applicant have a sound and reasonable plan for managing and distributing safe injectable materials and supplies?

d. Training (6 points)—Does the applicant have the resources and a reasonable plan to develop a comprehensive training program in the reduction of unsafe medical injections and in infection control practices?

e. Monitoring and evaluation (6 points)—Is the monitoring and evaluation plan feasible? Does the plan measure important indicators?

f. Sustainability (6 points)—Is the plan for sustainability reasonable and feasible?

3. Measures of Effectiveness (Total: 10 Points)

Are the measures of effectiveness reasonable?

4. Plans for Collaboration (Total: 5 Points)

Is there a plan or strategy for effectively collaborating with the Ministries of Health and local health-care providers?

V.2. Review and Selection Process

The Procurement and Grants Office (PGO) staff will review your application for completeness, and the HHS/CDC National Center for HIV, STD and TB Prevention (NCHSTP) will review it for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

In addition, the following factors may affect the funding decision:

- Geographic distribution and population of all seven countries—to ensure that funding is not concentrated in any one catchment area.
- Percentage of staff who are citizens of the country in which services will be provided.
- No award will be made without the concurrence of the U.S. Embassy and the CDC representative in the country under consideration.

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the HHS/CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and HHS/CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–6 Patient Care
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–12 Lobbying Restrictions
- AR–15 Proof of Non-Profit Status
- AR–16 Security Clearance Requirement
- AR–23 States and Faith-Based Organizations

Additional information on these requirements can be found on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Semi-annual progress report, due seven months after the beginning of each budget period. This report should contain the following elements:

a. Progress on Achieving Objectives.

b. Modification or New Activities.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact:

Technical Information Management Section, HHS/CDC Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact:

Kenneth Clark, M.D., MPH, Project Officer, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 1600 Clifton Road, NE, MS E04, Atlanta, GA 30333, Telephone: 404–639–8057, E-mail: *kjc4@cdc.gov*.

For budget assistance, contact:

Diane Flournoy, Contract Specialist, HHS/CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2072, E-mail: *dmf6@cdc.gov*.

Dated: July 8, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 04–15913 Filed 7–13–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04158]

Demonstration Projects for Implementation of Rapid HIV Testing in Historically Black Colleges and Universities and Alternative Venues and Populations; Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for a cooperative agreement entitled, ''Demonstration Projects for Implementation of Rapid HIV Testing in Historically Black Colleges and Universities and Alternative Venues and Populations'' was published in the **Federal Register** Wednesday, June 23, 2004, Volume 69, Number 120, pages 35035–35039. The notice is amended as follows:

On page 35035, column three, the Purpose section, please note: Part 1 of this funding opportunity serves only attendees of Historically Black Colleges and Universities (HBCUs), not Hispanic Serving Institutions.

On page 35036, column three, under ''Award Information,'' please:

Change the project period from 12 months to two years.

Dated: July 8, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15914 Filed 7–13–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04155]

Morbidity and Risk Behavior Surveillance; Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for a cooperative agreement entitled, ''Morbidity and Risk Behavior Surveillance'' was published in the **Federal Register** Thursday, June 24, 2004, Volume 69, Number 121, pages 35369–35373. The notice is amended as follows:

On page 35371, column one, section ''III. Eligible Applicants,'' please change the first sentence to read: Eligible applicants are limited to those state, local, or territorial health departments randomly sampled by the RAND Corporation in a national probability sample.

On page 35371, column three, section ''IV.2. Content and Form of Submission,'' please change narrative plan requirements to read: Your narrative plan should address activities to be conducted over the entire project period, and should include the following items in the order listed: Plan, Methods, Objectives, Timeline, Staff, Understanding of Need, Performance Measures, Budget and Justification. Or the applicant can choose to describe activities using these items: Methods, Capacity, Objectives, Proposed Data Uses, and Budget and Justification. In either case, the budget justification will not be counted in the stated page limit.

Dated: July 8, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15915 Filed 7–13–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Evaluation of Innovative Human Immunodeficiency Virus (HIV) Prevention Interventions for High-Risk Minority Populations

Announcement Type: New.

Funding Opportunity Number: PA 04249.

Catalog of Federal Domestic Assistance Number: 93.941.

Key Dates:

Application Deadline: August 13, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Section 317(k) of the Public Health Service Act [42 U.S.C. Section 247b(k)], as amended.

Purpose: The purpose of this program is to support evaluations by Community-Based Organizations (CBOs) of existing innovative HIV behavioral interventions that have been developed and are being implemented to serve

minority populations at high risk for acquiring or transmitting HIV infection. The innovative interventions must have demonstrated some evidence of promising results in reducing HIV risk behaviors, but must not have undergone a previous rigorous outcome evaluation. The intent of this announcement is to support the evaluation of existing interventions and provide feedback to implementing CBOs for improved program effectiveness, not to conduct research.

This program addresses the ''Healthy People 2010'' focus area(s) of HIV. Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for HIV, STD, and TB Prevention (NCHSTP): Strengthen the capacity nationwide to monitor the epidemic; develop and implement effective HIV prevention interventions and evaluate prevention programs; and to also decrease the number of persons at high risk for acquiring or transmitting HIV infection.

Activities: Throughout this program announcement, CBOs will be asked to evaluate the effectiveness of an existing innovative HIV behavioral intervention to reduce HIV-related risk behaviors (*e.g.* sex or drug behaviors) and/or reduce incident cases of HIV or STDs.

For the purpose of this program announcement, an innovative HIV behavioral intervention is an intervention to reduce HIV risk behavior(s) that uses an approach or method that is different from interventions used by other organizations that serve the target populations addressed by this announcement. The intervention must also have been developed from the ''ground up,'' that is, in close collaboration with the community or communities served by the CBO. The innovative approach or method can include an expansion or modification of existing behavioral theories that results in novel intervention strategies or activities and addresses behavior change at either the social, structural, or individual levels.

An intervention that has a published outcome evaluation, or that has demonstrated statistically significant positive intervention effects on HIV-related behavioral or biologic outcomes using a rigorous outcome evaluation, and therefore meets the criteria for inclusion in the Compendium of HIV Prevention Interventions with Evidence of Effectiveness (*http://www.cdc.gov/hiv/pubs/hivcompendium/HIVcompendium.htm*), WOULD NOT fulfill the goals of this announcement. In addition, an intervention that either replicates or makes limited changes to an intervention already in the Compendium WOULD NOT fulfill the goals of this announcement.

An existing innovative HIV behavioral intervention is an intervention that has well-defined and documented procedures and protocols that is currently being delivered to high-risk, minority individuals.

The CBO must provide evidence from its program operations suggesting that the intervention has the potential for reducing HIV risk behaviors. This evidence can be based on outcome data (*e.g.*, behavioral, psychosocial, or biologic) or process data that can be directly attributed to the intervention.

Furthermore, the innovative HIV behavioral intervention MUST NOT have undergone a rigorous outcome evaluation. A rigorous outcome evaluation is one that measures the short- or long-term effects of the intervention as delivered to one group in comparison to a group that has not received the intervention.

Any minority population at risk for HIV can be studied as part of this announcement. Proposals that seek to evaluate interventions designed for minority HIV seropositive people or interventions designed for minority populations not well-represented among those listed in the Compendium of HIV Prevention Interventions with Evidence of Effectiveness (examples include but are not limited to men who have sex with men, migrants, commercial sex workers, and transgendered) are especially welcome.

If CDC funds your CBO, you will be responsible for the following activities:

1. Secure adequate funding for implementation of the existing innovative intervention from sources other than this program announcement during the two-year evaluation period.

2. Provide CDC personnel with your existing intervention protocol, including all manuals, procedures, and other relevant materials.

3. In collaboration with CDC, establish a plan to evaluate your innovative intervention. The evaluation plan must include one pre-intervention baseline assessment, at least one follow-up assessment delivered at a minimum of 6 months after completion of the intervention, and the inclusion of a comparison group.

4. Develop measures and related data collection instruments to evaluate the effects of the innovative intervention. New instruments need to be field-tested.

5. Develop procedures to ensure confidentiality and informed consent, when appropriate, and obtain any other approvals as needed.

6. Recruit participants for the intervention and comparison groups.

7. Conduct individual baseline and follow-up assessment(s) according to the evaluation design.

8. Monitor intervention activities for quality assurance such that the intervention delivery is consistent with the established protocol.

9. Establish data management systems, analyze and interpret the data.

10. Prepare a final report for CDC, including submission of a cleaned data set.

11. Develop and implement a plan for using the evaluation results to improve implementation of the existing intervention by the CBO.

12. Develop and implement a plan to disseminate the findings and outcomes of the evaluation, including recommendations for the implementation of the successful innovative HIV behavioral intervention, presentations at state-wide and national health professional meetings, and reports of findings and recommendations.

13. If the innovative HIV behavioral intervention is found not to be successful, conduct a thorough examination of process evaluation data to explain the lack of success; that is, to identify potential problems or barriers in achieving HIV risk reduction.

In a cooperative agreement, CDC staff will be substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

1. Provide oversight to the cooperative agreement recipients in developing evaluation and data collection materials.

2. Provide assistance and consultation to assist the recipient in planning and implementing the evaluation, including technical guidance in the development of the evaluation design, data collection instruments, selection of comparison groups, outcome measures, data collection protocols, and pretesting of methods and instruments.

3. Ensure that the results of successful innovative HIV behavioral interventions and lessons learned from the evaluation are shared among grantees through meetings, workshops, conferences, newsletters, and other avenues of communication (*e.g.*, internet).

4. Ensure that the results of the evaluation are used to improve the existing intervention by the CBO.

5. Monitor successes and difficulties in the implementation and evaluation of the innovative intervention.

6. Monitor the protection of client privacy and compliance with other local, state and Federal requirements.

7. Monitor the award recipients' quality assurance activities and progress toward achieving target levels of performance for each core activity.

8. Collaborate and provide guidance in data analysis and dissemination of findings.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: The estimated total cost is $2,000,000 with approximately $1,000,000 awarded during the first fiscal year.

Approximate Number of Awards: 3 to 4.

Approximate Average Award: $300,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $400,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: 2 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may only be submitted by eligible CBOs, including faith-based CBOs, that provide HIV prevention services to members of racial/ethnic minority communities at high risk for HIV infection.

To be eligible, your CBO must meet all of the criteria listed below. Your CBO must:

A. Have tax-exempt status.

B. Be located in the area(s) where services will be provided or have provided services in the area for at least three years.

C. Not be a government or municipal agency, private or public university or college, or private hospital.

D. Not be a 501(c)(4) organization.

E. Your CBO must provide proof of very significant experience in delivering HIV prevention services to the targeted racial/ethnic minority populations during each of the last three years, and that the CBO has provided HIV prevention services to at least 200 clients in your proposed high-risk population during each of the last three years.

F. Your CBO must provide reasonable proof of adequate funding for the intervention during the next two years of this evaluation. If the funding is from the Federal Government, then the reasonable proof can be a copy of the latest Notice of Grant Award. Reasonable proof from other funding sources can include a letter from the funding agency indicating that funding will be available for the two years during which the intervention will be evaluated. If your agency funds the intervention, then reasonable proof can be a letter from the Board of Directors stating that the agency has the financial resources to fund the intervention and intends to fund the intervention for the next two years.

Note: All information submitted with your application is subject to verification during pre-decisional site visits.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Executive Summary: Applications must include a one-page, double-spaced executive summary as a cover page.

- Maximum number of pages: 1
- Font size: 12-point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25 (not including budget justification and appendices). If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Double spaced
- Font size: 12 point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon
- Held together only by rubber bands or metal clips; not stapled or bound in any other way
- MS WORD format
- Cover Page—the program announcement number and title
- Table of contents—with the major sections and page numbering including each attachment
- Consecutive page numbering throughout the document, including the attachments beginning with the first page of text, number all pages clearly and sequentially, including each page in the appendices.

This section of the program announcement defines program requirements. You must describe your plans to address each requirement. Please answer each item with complete sentences, provide all requested documents, and include Appendices as needed. If you fail to provide the required documents, your application will not be considered for review.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

A. Eligibility

This section will not count toward the page limit of your application, but it will determine if you are eligible for funding.

Place all documents requested in this section in an Appendix and label

''Appendix A: Proof of Eligibility''. For the following questions, proof of location, history, and service must include at least one copy of a progress report describing services to the population served, a letter from your funding organizations, process monitoring data, service utilization data (which includes client characteristics).

1. Tax-exempt status organizations are eligible. To demonstrate your eligibility, attach a copy of the letter from the Internal Revenue Service (IRS) showing that your CBO is a valid IRS 501(c)(3) tax-exempt non-profit organization, or attach a copy of your state proof of incorporation as a non-profit organization.

2. Government, municipal agency, university/college, or private hospitals are not eligible. To demonstrate your eligibility, provide a statement that your CBO is not a governmental or municipal agency, a government-affiliated organization or agency (*e.g.*, health department, school board, public hospital), or a private or public university or college.

3. IRS 501(c)(4) organizations are not eligible. To demonstrate your eligibility, provide a statement that your CBO is not included in the category described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities.

4. Location in area or provision of services in area is required. To demonstrate your eligibility, describe your location relative to the served area and describe the duration and type of services provided. Or, describe how your CBO has provided services in the proposed service area for at least three years.

5. CBOs serving ethnic minority populations are eligible. Provide proof that your CBO has very significant experience in delivering HIV prevention services to the targeted racial/ethnic minority populations during each of the last three years.

6. CBOs serving at least 200 minority clients per year are eligible. Provide proof that your CBO has provided HIV prevention services in each of the last three years to at least 200 clients in the proposed high-risk minority population.

7. Adequate funding for existing innovative intervention is required. Provide reasonable proof that your CBO has adequate funding to support the intervention for the two-year duration of this evaluation. If the funding is from the Federal Government, then reasonable proof can be a copy of your latest Notice of Grant Award. Reasonable proof from other funding sources can include a letter from the funding agency indicating that funding will be available for the two years during which the intervention will be evaluated. If your agency funds the intervention, then reasonable proof can be a letter from the Board of Directors stating that the agency has the financial resources to fund the intervention and intends to fund the intervention for the next two years.

B. Specific Aims

Describe the objectives of the proposed program.

C. Justification and Significance of the Innovative Intervention

1. Describe the components of the innovative intervention. Explain why this HIV behavioral intervention is innovative, and provide an explicit and detailed description of all intervention activities. Emphasize novel intervention strategies or approaches, including the uniqueness and relevance of the approach to HIV risk reduction.

2. Describe how the innovative HIV behavioral intervention was developed from the ''ground up;'' that is, in collaboration with the community or communities that are served by the intervention. Describe the rationale for developing the intervention, which could include a community-based needs assessment or theoretical basis. Specify the involvement of the target population in planning and implementing the intervention.

3. Provide evidence that the innovative intervention has worked in the past. This evidence can include data from pre- and post-intervention monitoring of outcomes such as behavioral, psychosocial, or biologic data, or process data that can be directly attributable to the innovative intervention.

4. Explain why you think your CBO's innovative intervention works. This explanation can refer to (a) how specific activities, processes or steps led to the observed results, and/or (b) how the intervention was based or expanded upon current behavior change theories.

D. Justification of HIV Prevention Needs of Minority Target Population

Note: Contact your health department to obtain HIV/AIDS statistics and HIV needs assessment data developed for the community planning process. This information will help you answer the questions in this section.

1. Describe the ethnic/racial minority target population being served by the innovative intervention. Applicants must include a table in their application as Appendix B that describes the target population. The table must include the following six categories, and provide the numbers (n) and percentages (%) for each subgroup you have served over the past year:

(1) Total sample population;

(2) Transmission risk including MSM, IDU, MSM/IDU, Heterosexual, Other risk group(s);

(3) Gender including Men, Women, Transgender (total), Transgender (male to female), Transgender (female to male);

(4) Age group including < 20, 20 to 29, 30 to 49, 50+;

(5) HIV sero-status including HIV positive, HIV negative, HIV unknown;

(6) Race/Ethnicity including American Indian/Alaskan Native, Asian/Pacific Islander, Black not Hispanic, White not Hispanic, Hispanic, and Unknown or multiple race.

Proposals that seek to evaluate interventions designed for minority HIV seropositive people or interventions designed for minority populations not well-represented among interventions listed in the *Compendium of HIV Prevention Interventions with Evidence of Effectiveness* (examples include but are not limited to men who have sex with men, migrants, commercial sex workers, and transgendered) are especially welcome.

2. Describe how the proposed minority target population reflects HIV community planning priorities. Describe how the local, regional or state HIV prevention community plan, especially the epidemiologic profile and behavioral data, were used in the selection of the target population.

3. Provide proof that your CBO has very significant experience in delivering HIV prevention services to the targeted racial/ethnic minority population. Include a history of your CBO's service to the population: Explain how long you have provided services to the population, the kinds of services that have been provided, the outcomes of services provided, and your relationship with the community.

E. Evaluation Plan

Describe the proposed evaluation plan (including the evaluation question(s), design, methods for recruitment and retention, outcome measures, data analysis plan, dissemination activities, and timeline) to demonstrate the soundness and capability of producing intended results.

1. State the evaluation question(s).

2. Describe the design to be used to evaluate the effects of the intervention. The evaluation design must meet the following criteria:

a. A design including a minimum of one pre-intervention and one post-

intervention assessment is required. The post-intervention assessment (follow-up) should occur at a minimum of 6 months after completion of the intervention activities. Proposals that provide for additional follow-ups beyond 6 months are especially welcome.

b. A design that employs a rigorous evaluation of the effects of the intervention is required. A rigorous evaluation can be accomplished by including a comparison group that does not receive the innovative intervention. Comparison groups can be either concurrent or historical. Examples of concurrent comparisons include (1) your CBO administering the innovative intervention to one segment of the minority target population and not to another during the same period of time, and (2) comparison of data from your CBO's use of the innovative intervention to that of another CBO not using the innovative intervention for the same minority target population. An example of a historical comparison includes comparing outcome data from your CBO's current use of the innovative intervention with data collected at multiple times from the same target population before the implementation of the innovative intervention.

3. Describe how you will recruit participants. A minimum of 200 people from the target population must complete the pre-intervention interview and enroll in the intervention evaluation within one year. That is to say, a minimum of 100 people must be included in the group that receives the intervention, and a minimum of 100 people must be included in the group that does not receive the intervention. Provide proof that your CBO has provided HIV prevention services in each of the last three years to at least 200 clients in the proposed high-risk minority population.

4. Describe how your CBO will retain at least 75 percent of the evaluation cohort for the 6-month follow-up.

5. Specify the HIV risk reduction outcome measures that will be assessed to determine the intervention's effects. Outcomes shall include HIV-related risk behaviors (*e.g.*, sex or drug behaviors) and/or biologic endpoints (*e.g.*, incident cases of STDs or HIV). Also, describe methods that will be used to collect and monitor outcome data.

6. Provide a plan for data management systems, particularly how your CBO will maintain data quality control, and perform statistical analyses of the outcome data.

7. Describe how your CBO intends to use the results of this evaluation to improve program capacity and enhance delivery of prevention services in the future. In other words, describe in detail how your CBO will use the findings from this evaluation to improve specific HIV program service components offered by your CBO.

8. Describe how you will disseminate the findings and outcomes of evaluation, including recommendations for the implementation of the successful innovative HIV behavioral intervention, through presentations at state-wide and national health professional meetings, and reports of findings and recommendations.

9. Provide a detailed 2-year timeline for the proposed evaluation.

10. Describe, if applicable, how you plan to address confidentiality and any other ethical issues related to the implementation of the evaluation.

F. Capacity

1. Describe how your CBO has the technical and programmatic capacity and proven track record to implement and evaluate the intervention in the community. In Appendix C, provide the curriculum vitae or resumes of all key CBO personnel and organizational charts of your CBO.

2. Provide evidence that your CBO has been successful in retaining intervention participants in the past, and can recruit and enroll at least 200 people for the evaluation within one year.

3. If your CBO requires assistance with the design and implementation of the evaluation and the maintenance of quality control during the course of the evaluation, provide a statement of partnerships with locally-based evaluation specialists, evaluation organizations, universities, or health departments. Also provide, if applicable, in Appendix D the curriculum vitae of key personnel of partner organizations and Letters of Support regarding the willingness of partners to collaborate with the CBO and CDC.

4. Provide a plan for CBO and, if applicable, partner staffing and training, as needed, to ensure that the intervention can be properly implemented and evaluated. Provide the qualifications of proposed staff needed to conduct activities, and the percentage of time each staff member will be assigned to the project. If CBO staff will be used to perform the outcome evaluation, then specify how the roles of intervention staff and evaluation staff will be kept distinct and separate to ensure objectivity.

G. Budget

Provide a detailed, line-item budget for year one of the project and a justification for each line-item. This section will not count toward the page limit of your application.

H. Additional Information

Additional information may be included in the application Appendices. The Appendices will not be counted toward the narrative page limit, and must include the following additional information:

- Appendix A: Proof of Eligibility
- Appendix B: Attachment 1 table with target population characteristics
- Appendix C: Curriculum vitae or resumes of key CBO staff and organizational charts
- Appendix D: Letters of Support and curriculum vitae from partner organizations, if applicable Letters of Support (LOS): If the CBO chooses to partner with another organization or institution that will play a role in conducting intervention activities, then applications must include Letters of Support (LOS) in Appendix D. Each LOS should include a description of the past relationship with the applicant and the role(s) the local partner will play in conducting intervention activities (*e.g.*, accessing the target population, implementing the selected intervention, staff involved). Your LOS must be written in the following format:
  - Maximum number of pages: 1
  - Font size: 12-point unreduced
  - Double spaced
  - Paper size: 8.5 by 11 inches
  - Page margin size: One inch
  - Printed only on one side of page
  - Written in plain language, avoid jargon

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional

documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: August 13, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may be used to hire contractors or support partners to assist with the evaluation. CDC encourages you to develop partnerships with other prevention providers, locally-based researchers, research groups, universities or health departments to evaluate your innovative intervention. However, your CBO, not the contract organization(s) or the partner(s), must conduct the largest portion of the evaluation activities funded by this award.
- Eighty percent (80%) of the funds awarded under subcontracts must be applied directly to the evaluation activities.
- Funds cannot be used to provide medical or substance abuse treatment.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement in an Appendix. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

Guidance for completing your budget can be found on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA 04249, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

Evaluation Plan Requirements (Application Section E) (35 Points)

1. Rate the evaluation question(s) based on their soundness and relevance to HIV behavioral prevention. (3 points)

2. Does the evaluation design include at a minimum one pre-intervention and one post-intervention assessment? Does the post-intervention assessment (*i.e.*, the follow-up) occur at least 6 months after completion of the intervention activities? Does the proposed evaluation design include a concurrent or historical comparison group? (7 points)

3. Has the applicant proposed an adequate plan to recruit and enroll at least 200 participants within one year of the project? Did the applicant provide adequate proof that their CBO has provided HIV prevention services in each of the last three years to at least 200 clients in the proposed high-risk minority population? (5 points)

4. Has the applicant proposed an adequate plan to retain at least 75 percent of the evaluation cohort for the 6-month follow-up? (5 points)

5. Rate the relevance of the proposed outcome measures that will be used to determine the intervention's effects with respect to HIV risk reduction. Outcomes should assess HIV-related risk behaviors (*e.g.*, sex or drug behaviors) and/or biologic endpoints (*e.g.*, incident cases of STDs or HIV). Rate the methods described to monitor and collect outcome data. (5 points)

6. Are plans for data management systems, data quality control, and statistical analysis of outcome data sufficient and appropriate for assessing the effects of the intervention on HIV risk reduction? (2.5 points)

7. Has the applicant described how the results of this evaluation will be used to improve program capacity and to enhance the delivery of prevention services? In other words, does the applicant describe how the CBO will feed the information gathered from this evaluation back into the program? (2.5 points)

8. Has the CBO provided an adequate plan for the dissemination of results and recommendations from the evaluation? (2.5 points)

9. Is the proposed timeline detailed and is it sufficient to achieve project goals within 2 years? (2.5 points)

10. Has the CBO provided an adequate plan, if applicable, for addressing confidentiality and any other ethical issues related to the implementation of the evaluation? (not scored)

Justification and Significance of the Innovative Intervention (Application Section C) (30 Points)

1. Does the applicant provide a thorough description of the components of the intervention and explain why the intervention is innovative (that is, based on a different intervention approach or method)? Rate the innovativeness of the HIV behavioral intervention. The rating should be based on a description of the novel intervention strategies or approaches, including the uniqueness and relevance to HIV risk reduction. (10 points)

2. Does the applicant provide sufficient evidence that the intervention

was developed from the ''ground up;'' that is, in collaboration with the community or communities that are served by the intervention? The description could include the relevance of a community-based needs assessment or theoretical basis, and should specify the involvement of the target population in intervention planning and implementation. (5 points)

3. Does the applicant provide sufficient evidence suggesting that the innovative HIV behavioral intervention has worked in the past? Do they provide data from pre- and post-intervention monitoring of outcomes such as behavioral, psychosocial, biologic, or process outcome data supporting positive HIV risk reduction that can be directly attributed to the intervention? (10 points)

4. Does the applicant explain why they think the innovative intervention works? Do they refer to specific activities, processes or steps that led to their observed results, or do they base their explanation on current behavioral change theories (which could include a logic model)? (5 points)

Capacity (Application Section F) (20 Points)

1. Does the applicant have sufficient technical and programmatic capacity and a proven track record to implement and evaluate the intervention in the community? (5 points)

2. Does the applicant have the capacity to recruit and enroll at least 200 people within one year of the evaluation? Have they provided evidence of prior success in retaining intervention participants? (5 points)

3. If partnerships with locally-based evaluation specialists, evaluation organizations, universities, or health departments are cited in the application, do the partners demonstrate sufficient expertise to help achieve the project goals? (5 points)

4. Are the staffing and training plans for the CBO and partner organization (if applicable) adequate to properly implement and evaluate the intervention? If CBO staff will be used to perform the outcome evaluation activities, have they demonstrated that the roles of intervention staff and evaluation staff will be kept distinct and separate to ensure objectivity? (5 points)

Justification of HIV Prevention Needs of Minority Target Population (Application Section D) (10 Points)

1. Does the applicant reasonably justify the HIV prevention needs of the targeted minority population? To help answer this question, review the information provided in Appendix B (Target Population Characteristics) to determine whether the applicant has sufficiently described the racial and ethnic composition of the targeted population and the behaviors or circumstances that place the targeted population at high risk for HIV infection or for transmitting the HIV virus. Proposals that seek to evaluate interventions designed for minority HIV seropositive people or interventions designed for minority populations not well-represented among interventions listed in the Compendium of HIV Prevention Interventions with Evidence of Effectiveness (examples include but are not limited to men who have sex with men, migrants, commercial sex workers, and transgendered) should be given high priority. (4 points)

2. How well does the target population reflect HIV community planning priorities? (3 points)

3. Rate the strength of proof provided by the applicant that it has very significant experience in proving HIV prevention services to the targeted racial/ethnic minority population. This proof should include a history of the CBO's service to the population that includes an explanation of how long the CBO has provided services to the population, the kinds of services provided, the outcomes of services provided, and the CBO's relationship with the community (3 points)

Specific Aims (Application Section B) (5 Points)

Are the specific aims of the proposed evaluation adequately described and consistent with the objectives of this cooperative agreement?

Eligibility (Application Section A) (Not Scored)

This section of your application will be reviewed to determine if you are eligible for funding. All supporting documents were placed in Appendix A: Proof of Eligibility.

Budget (Application Section G) (Not Scored)

The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, itemized, consistent with the intended use of funds, and allowable.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness and eligibility (Appendix A: Proof of Eligibility) by NCHSTP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate all complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

If your CBO is funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will

serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, PA 04249, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Tomas Rodriguez, CDC, NCHSTP, Mailstop E–37, 1600 Clifton Rd, NE, Atlanta, GA 30333, ph: (404) 639–5240, fax: (404) 639–1950, email: *trr0@cdc.gov*.

For financial, grants management, or budget assistance, contact: Betty Vannoy, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2897, E-mail: *bbv9@cdc.gov*.

Dated: July 7, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15916 Filed 7–13–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 04132]

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Organ Transplant Infection Detection and Prevention Program

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Organ Transplant Infection Detection and Prevention Program, Program Announcement Number 04132.

Times and Dates: 1 p.m.–1:30 p.m., August 4, 2004 (Open). 1:45 p.m.–4:30 p.m., August 4, 2004 (Closed).

Place: Teleconference phone number 1–877–951–9728 Pass Code 362242.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Organ Transplant Infection Detection and Prevention Program, Program Announcement Number 04132.

FOR FURTHER INFORMATION CONTACT: Trudy Messmer, PhD., Scientific Review Administrator, Centers for Disease Control, National Center for Infectious Diseases, 1600 Clifton Road NE, Mailstop C19, Atlanta, GA 30333, Telephone 404.639.3770.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 1, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–15801 Filed 7–13–04; 8:45 am]

BILLING CODE 4163–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): The Epidemiological Follow-Up of Thyroid Disease in Persons Exposed to Radioactive Fallout From Atomic Weapons Testing at the Nevada Test Site, PA #04173

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting: The Epidemiological Follow-up of Thyroid Disease in Persons Exposed to Radioactive Fallout from Atomic Weapons Testing at the Nevada Test Site, Program Announcement Number 04173.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): The Epidemiological Follow-up of Thyroid Disease in Persons Exposed to Radioactive Fallout from Atomic Weapons Testing at the Nevada Test Site, Program Announcement Number 04173.

Times and Dates: 1 p.m.–1:30 p.m., August 13, 2004 (Open). 1:30 p.m.–4:30 p.m., August 13, 2004 (Closed).

Place: National Center for Environmental Health/Agency for Toxic Substance Disease Registry, 1825 Century Boulevard, Atlanta, Georgia 30345, Teleconference Number 1–888–889–1733.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04173.

For Further Information Contact: J. Felix Rogers, Ph.D., M.P.H., CDC, National Center for Environmental Health/Agency for Toxic Substance Disease Registry, Office of Science, 1600 Clifton road, NE, MS–E28, Atlanta, GA 30333, (404) 498–0222.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 1, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15917 Filed 7–13–04; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Evaluation of Brain Heart Infusion Agar Plates Containing 6 μg of Vancomycin Per ml To Detect Vancomycin-Resistant Strains of *Staphylococcus aureus*

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of an evaluation study and request for public comment.

SUMMARY: This notice announces a study to evaluate the effectiveness of Brain Heart Infusion Agar plates containing 6 µg of vancomycin (BHI–V) per ml to detect Vancomycin-resistant *Staphylococcus aureus*.

The CDC would like manufacturers of BHI–V to submit a total of 120 agar plates, 40 plates each of three different lots of BHI–V agar, for testing. The protocol is available on request.

The purpose of this study is to validate the use of BHI–V agar plates, which are currently approved by the Food and Drug Administration in the United States for detecting vancomycin-resistant *Enterococcus* species, for detecting vancomycin-resistant *Staphylococcus aureus*.

DATES: Comments on the CDC Evaluation of Brain Heart Infusion Agar plates containing 6 µg of vancomycin per ml to detect Vancomycin-resistant strains of *Staphylococcus aureus* must be received in writing on or before September 13, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Roberta Carey at (404) 639–3032, e-mail: *RCarey@cdc.gov*, prior to 4 p.m. on Friday, September 7, 2004.

ADDRESSES: Comments should be submitted to Dr. Roberta Carey, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Division of Healthcare Quality Promotion (C–16), 1600 Clifton Rd., NE., Atlanta, GA 30333, or via e-mail: *RCarey@cdc.gov*.

SUPPLEMENTARY INFORMATION: Strains of *Staphylococcus aureus* that are resistant to the antimicrobial agent vancomycin pose both clinical and public health concerns. Such strains are difficult to treat and have the potential to spread broadly in healthcare settings causing outbreaks of infection. The first fully vancomycin-resistant isolate of *S. aureus* (VRSA) was isolated from a patient in Michigan in June 2002. A second isolate of VRSA was recovered from a patient in Pennsylvania in September 2002. Unlike the first isolate, resistance in the second isolate was difficult to detect in clinical laboratories using automated antimicrobial susceptibility testing methods. A third VRSA was recovered recently in New York (2004). This isolate also was not detected as fully resistant to vancomycin on initial testing with automated laboratory methods. To enhance the capability to detect VRSA, the CDC proposes that clinical microbiology laboratories inoculate a BHI–V agar plate with colonies of *S. aureus*, particularly methicillin-resistant strains of *S. aureus*, in conjunction with routine methods of antimicrobial susceptibility testing. Since the BHI–V plate is currently approved by FDA only for use with *Enterococcus* species, the reliability of these commercial media for *S. aureus* needs to be established. The CDC proposes to evaluate, free of charge, all commercially prepared BHI–V currently approved for distribution in the United States. The CDC requests that 120 plates, 40 plates each of 3 different lots of BHI–V agar, be provided to CDC by the manufacturers of these products. The data generated by CDC will be shared with FDA. Those manufacturers who wish to label their product for use with *S. aureus* can request review of these data by contacting Sally Selepak at 301–594–2096 in the Division of Microbiology, FDA. The study is to be initiated on September 13, 2004.

Dated: July 9, 2004.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 04–15912 Filed 7–13–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health and Nutrition Examination Survey (NHANES) Stored Biologic Specimens: Guidelines for Proposals To Use Samples and Proposed Cost Schedule; Correction

A notice and request for comments titled ''National Health and Nutrition Examination Survey (NHANES) Stored Biologic Specimens: Guidelines for Proposals To Use Samples and Proposed Cost Schedule'' was published in the **Federal Register** on May 24, 2004 (69 FR 29551). This notice is corrected as follows:

On page 29554, third column: the heading ''Proposed Cost Schedule for Providing NHANES III DNA Specimen Bank'' should now read: ''Proposed Cost Schedule for Providing NHANES Stored Biologic Specimens.''

Dated: July 5, 2004.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 04–15911 Filed 7–13–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0291]

Risk Assessment for Cosmetics and Potential Contamination With Bovine Spongiform Encephalopathy Agent; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a risk assessment regarding the potential for variant Creutzfeldt-Jakob Disease (vCJD) in humans from exposure to cosmetics containing cattle-derived protein infected with the bovine spongiform encephalopathy (BSE) agent. FDA is making this document available to communicate publicly the potential risk to public health from cosmetics made with cattle materials that may be contaminated with the BSE agent.

ADDRESSES: Submit written requests for single copies of the risk assessment to the Office of Plant and Dairy Foods (HFS–365), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request, or include a fax number to which the document may be sent. Alternatively, you may request a copy of the document by calling 301–436–2367, or you may fax your request to 301–436–2632. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the risk assessment.

FOR FURTHER INFORMATION CONTACT: Morris Potter, Center for Food Safety and Applied Nutrition (HFS–006), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 404–253–1225.

SUPPLEMENTARY INFORMATION:

I. Background

Cosmetics may be made from a variety of cattle-derived ingredients. These ingredients include: Albumin, brain extract, brain lipid, cholesterol, fibronectin, sphingolipids, collagen, keratin, and tallow, and tallow derivatives. Tallow derivatives, particularly fatty acids and glycerin, are the predominant cattle ingredient used by the cosmetic industry. Cattle-derived ingredients serve many functions and may be used as skin conditioning agents, emollients, binders, and hair and nail conditioning agents.

There are several routes through which cosmetics contaminated with the agent that causes BSE could transmit disease to humans. Transmission of the BSE agent to humans through intact skin is not likely; however, cosmetics may be ingested or applied to cut or abraded skin or to mucosal tissues, particularly in the eye, which could provide direct routes for infection.

II. Risk Assessment for Cosmetics and Potential Contamination With the BSE Agent

The risk assessment presents scientific evidence on the risk of transmission of vCJD to humans from cattle-derived ingredients used in the manufacture of cosmetics. FDA has prepared a qualitative assessment that follows the generally accepted framework for risk assessments endorsed by the Codex Alimentarius Commission. This framework involves the following steps:

(1) *Hazard identification*. A review of available information on vCJD and its link to BSE-infected cattle.

(2) *Exposure assessment*. An evaluation of the range of possible cattle-derived ingredients that might be used in the manufacture of cosmetics and the likelihood that a contaminated cosmetic results in transmission of the BSE agent to humans.

(3) *Hazard characterization*. The assessment of the potential for BSE transmission and development of vCJD in humans.

(4) *Risk characterization*. The integration of information on potential hazards with the exposure assessment.

The risk assessment also discusses the quality of information available for, and the uncertainties associated with, the assessment.

FDA has determined that this risk assessment is appropriate to the circumstances.

III. Electronic Access

The risk assessment is available electronically at *http://www.cfsan.fda.gov*.

Dated: July 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–15979 Filed 7–13–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2002–13057]

Carriage of Navigation Equipment for Ships on International Voyages

AGENCY: Coast Guard, DHS.

ACTION: Notice of policy; extension.

SUMMARY: The Coast Guard is extending its policy for resolving conflicts between its own regulations on navigation equipment on ships and the recent amendments to the International Convention for the Safety of Life at Sea, 1974, (SOLAS). The amendments to SOLAS entered into force on July 1, 2002. Until the Coast Guard aligns its regulations with these amendments, this policy should benefit ship owners and operators by relieving them of the need to meet existing Coast Guard regulations that are incompatible with or duplicitous of the new SOLAS requirements.

DATES: This extension of policy is effective July 14, 2004.

ADDRESSES: Documents mentioned in this notice are part of docket USCG–2002–13057 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact LCDR James Rocco, Office of Vessel Traffic Management, U.S. Coast Guard Headquarters, telephone (202) 267–0550; e-mail *jrocco@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Background

In December 2000, the International Maritime Organization amended chapter V of the International Convention for the Safety of Life at Sea, 1974, (SOLAS) at the 73rd Session of the Maritime Safety Committee. The amendments were accepted by the Contracting Governments to SOLAS on January 1, 2002, and entered into force on July 1, 2002.

These amendments, in part, added requirements for the carriage of voyage data recorders (VDR) and automatic identification systems (AIS), changed the existing tonnage thresholds used to establish carriage requirements for some navigation equipment, and allowed an electronic chart display and information systems (ECDIS) to be accepted as meeting the chart carriage requirements of chapter V. Because of these amendments, the Coast Guard will need to align its regulations in titles 33 and 46 of the Code of Federal Regulations, especially those in 33 CFR part 164, with these amendments. Until this alignment occurs, problems may result because of the inconsistencies between SOLAS chapter V and Coast Guard regulations. For example, if a ship owner elects to install ECDIS, the ship may still be required under 33 CFR 164.33 to carry paper nautical charts.

Policy Statement

Since publishing our initial policy statement on August 15, 2002 (67 FR 53382), we have implemented some SOLAS V amendment regulations. As part of our maritime security regulations, for example, we published an automatic identification system vessel carriage requirement final rule (68 FR 60559, October 22, 2003). But until the Coast Guard aligns all its regulations with the amendments to SOLAS chapter V, the following policy applies:

For ships to which this policy applies, when an amendment to chapter V and a provision in Coast Guard regulations address the same navigational safety concern and when applying both would result in an unnecessary duplication, the Coast Guard will accept the provision under chapter V as meeting the corresponding Coast Guard regulation. In other words, if a ship has an approved ECDIS installed according to chapter V, the ECDIS will be considered by the Coast Guard as meeting its nautical chart regulation in 33 CFR 164.33(a)(1), because the ECDIS meets the same navigational safety concerns as do paper nautical charts. This policy benefits the ship owner and operator by relieving them of the need to unnecessarily duplicate equipment.

Under SOLAS, chapter I, regulation 12, the Coast Guard will not issue SOLAS certificates to U.S.-flag ships that are not in full compliance with the applicable requirements of the new SOLAS, chapter V. The Coast Guard will continue to exercise port state control authority under SOLAS, chapter I, regulation 19, for foreign-flag ships that are not in compliance with the applicable requirements of SOLAS, chapter V. Also, U.S. flag vessels on international voyages, as defined in SOLAS, should be aware that foreign

countries may exercise port state control authority under SOLAS, for ships of 150 or more gross tonnage (that is, tonnage as defined under the International Convention on Tonnage Measurement of Ships, 1969) that are not in compliance with the applicable requirements of SOLAS, chapter V.

What Ships Are Affected?

This policy applies to the following ships, which are subject to the amendments to chapter V:

1. U.S.-flag ships of 150 or more gross tonnage that engage on international voyages.

2. U.S.-flag ships certificated solely for service on the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island, and, on the north side of Anticosti Island, the 63rd Meridian.

3. Foreign-flag ships to which SOLAS, chapter V, applies that are operating on the navigable waters of the United States.

Note that U.S.-flag ships without mechanical means of propulsion are exempt from certain requirements of SOLAS under SOLAS, chapter V, regulation 3.1.

This policy is not applicable to U.S.-flag ships engaged only on domestic voyages. These ships must continue to comply with the existing navigation equipment requirements in titles 33 and 46 CFR.

How Long Will This Policy Remain in Effect?

This policy will remain in effect until titles 33 and 46 CFR are aligned with SOLAS, chapter V.

Dated: July 8, 2004.

Joseph J. Angelo,

Acting Assistant Commandant Marine Safety, Security and Environmental Protection.

[FR Doc. 04–15968 Filed 7–13–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Supplemental Property Acquisition and Elevation Assistance.

OMB Number: 1660–0048.

Abstract: FEMA Form 20–10, Financial Status Report, is used to review States quarterly reports, to ensure that the overall program is progressing on schedule and that the projects meet the intent of the Act. States receiving a grant award are responsible for documenting and reporting to FEMA the use of program funds in accordance with the Act and implementing regulations. Sub-grantees (local governments) are responsible for implementing the grant scope of work and reporting quarterly to the Sate as to the project progress and status of funds received under the grant. The State will review reports from local communities to ensure grant projects are progressing on schedule and funds are being used appropriately.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: FEMA Form 20–10, Financial Status Report, 1 hour; and, Quarterly Progress Report, 4.2 hours.

Estimated Total Annual Burden Hours: 1,165.

Frequency of Response: Quarterly.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Emergency Preparedness and Response Directorate/Federal Emergency Management Agency, U.S. Department of Homeland Security, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments must be submitted on or before August 13, 2004.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections@dhs.gov*.

Dated: July 6, 2004.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–15900 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1528–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1528–DR), dated June 30, 2004, and related determinations.

EFFECTIVE DATE: June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 30, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from severe storms and flooding on May 30, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Direct Federal Assistance is authorized, if

warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Bradley, Calhoun, Clark, Columbia, Hempstead, Howard, Lafayette, Little River, Nevada, Ouachita, Pike, and Sevier Counties for Public Assistance. Direct Federal Assistance is authorized, if warranted.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15897 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1529–DR]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1529–DR), dated June 30, 2004, and related determinations.

EFFECTIVE DATE: June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 30, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of California, resulting from flooding as a result of a levee break on June 3, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William L. Carwile, III, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of California to have been affected adversely by this declared major disaster:

San Joaquin County for Public Assistance.

San Joaquin County within the State of California is eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15896 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1520–DR]

Indiana; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–1520–DR), dated June 3, 2004, and related determinations.

EFFECTIVE DATE: June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 25, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program–Other Needs, 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15904 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1518–DR]

Iowa; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1518-DR), dated May 25, 2004, and related determinations.

EFFECTIVE DATE: July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 25, 2004:

Appanoose and Lucas for Individual Assistance (already designated for Public Assistance).

Davis, Des Moines, Hamilton, Henry, Louisa, Monroe, Muscatine, Scott, Wapello, Washington, and Wayne for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15901 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1523–DR]

Kentucky; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1523–DR), dated June 10, 2004, and related determinations.

EFFECTIVE DATE: June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 10, 2004:

Lincoln County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15906 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1523–DR]

Kentucky; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1523–DR), dated June 10, 2004, and related determinations.

EFFECTIVE DATE: July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 10, 2004:

Greenup County for Individual Assistance.

Boyd, Carter, and Jackson for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15907 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1527–DR]

Michigan; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA–1527-DR), dated June 30, 2004, and related determinations.

EFFECTIVE DATE: June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 30, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Michigan, resulting from severe storms, tornadoes, and flooding on May 20–24, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Michigan.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Marianne Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Michigan to have been affected adversely by this declared major disaster:

Barry, Berrien, Cass, Genesee, Gladwin, Ingham, Ionia, Jackson, Kent, Livingston, Macomb, Mecosta, Oakland, Ottawa, Sanilac, Shiawassee, St. Clair, St. Joseph, and Wayne Counties for Individual Assistance.

Arenac, Barry, Berrien, Cass, Genesee, Gladwin, Ingham, Ionia, Jackson, Kent, Livingston, Macomb, Mecosta, Newaygo, Oakland, Ottawa, Saginaw, Sanilac, Shiawassee, St. Clair, St. Joseph, Van Buren, and Wayne Counties within the State of Michigan are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15909 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1519–DR]

Ohio; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1519–DR), dated June 3, 2004, and related determinations.

DATES: Effective Date: June 21, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 21, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15902 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1519–DR]

Ohio; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–1519–DR), dated June 3, 2004, and related determinations.

EFFECTIVE DATE: July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of June 3, 2004:

Athens, Delaware and Tuscarawas Counties for Public Assistance (already designated for Individual Assistance.)

Holmes County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15903 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1522–DR]

West Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1522–DR), dated June 7, 2004, and related determinations.

EFFECTIVE DATE: June 28, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 28, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15905 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1526–DR]

Wisconsin; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1526–DR), dated June 18, 2004, and related determinations.

EFFECTIVE DATE: July 3, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 3, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15898 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1526–DR]

Wisconsin; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1526–DR), dated June 18, 2004, and related determinations.

EFFECTIVE DATE: July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 18, 2004:

Clark, Crawford, Grant, Green Lake, and Vernon Counties for Individual Assistance (already designated for Public Assistance.)

Jefferson County for Public Assistance (already designated for Individual Assistance.)

Adams, Jackson, Juneau, Marquette, and Monroe Counties for Individual Assistance and Public Assistance.

Brown, Calumet, Chippewa, Dane, Eau Claire, Green, Iowa, LaCrosse, Lafayette, Marathon, Milwaukee, Outagamie, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Taylor, Trempealeau, Walworth, Washington, Waukesha, Waupaca, Waushara, and Wood Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15908 Filed 7–13–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–48]

Notice of Submission of Proposed Information Collection to OMB; Disaster Recovery Grant Reporting System

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting renewal of approval to collect information from cities, counties, and states that have received program grants. Grantees describe their recovery needs, develop action plans, and report performance on a Disaster Recovery Grant Reporting System. HUD also uses the information for quarterly reports to Congress.

DATES: Comments Due Date: August 13, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0165) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Disaster Recovery Grant Reporting System.

OMB Approval Number: 2506–0165.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: HUD is requesting renewal of approval to collect information from cities, counties, and states that have received program grants. Grantees describe their recovery needs, develop action plans, and report performance on a Disaster Recovery Grant Reporting System. HUD also uses the information for quarterly reports to Congress.

Frequency of Submission: Quarterly, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	82	4		33.41		10,960

Total Estimated Burden Hours: 10,960

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 7, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–16008 Filed 7–13–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Approved Recovery Plan for the Higgins Eye Pearlymussel (*Lampsilis higginsii*).

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the approved recovery plan for the Higgins eye pearlymussel (*Lampsilis higginsii*). This species is federally listed as endangered under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*); it occurs in the Mississippi River and tributaries to the Mississippi River in Illinois, Iowa, Minnesota, Missouri, and Wisconsin.

Actions needed for recovery of the Higgins eye pearlymussel include alleviating threats posed by exotic species, especially zebra mussels (*Dreissena polymorpha*), protecting remaining populations, and reintroducing the species into habitats that it historically occupied.

ADDRESSES: This recovery plan is available from the following addresses:

1. Field Supervisor, U.S. Fish and Wildlife Service, Twin Cities Field Office, 4101 East 80th Street, Bloomington, MN 55425.

2. The World Wide Web at: *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Mr. Phil Delphey, Twin Cities Field Office, (see **ADDRESSES** section No. 1 above), telephone (612) 725–3548 ext. 206. TTY users may contact Mr. Delphey through

the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals or plants is a primary goal of the Service's endangered species program. A species is considered recovered when its status has been improved to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for delisting species, and provide estimates of the time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and the opportunity for public review and comment be provided during recovery plan development. Information presented during the comment period has been considered in the preparation of the approved recovery plan and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal agencies and other entities so that they can take these comments into account during the course of implementing recovery actions.

Higgins eye pearlymussel is a large river species occupying stable substrates that vary from sand to boulders; it does not occur in firmly packed clay, flocculent silt, organic material, bedrock, concrete or unstable sand. Water velocities should be less than 1 m/s during periods of low discharge. The species is usually found in mussel beds that contain at least 15 other species. The density of all mussels in the bed typically exceeds 10/m^2. Although zebra mussels are currently the most important threat to *L. higginsii*, construction activities and environmental contaminants may also pose significant threats. This revised plan includes ten Essential Habitat Areas: six in the Mississippi River between river miles 489 and 656; one in the Wisconsin River; and three in the St. Croix River, which empties into the Mississippi River at river mile 811, just downstream of Minneapolis/St. Paul, Minnesota. Higgins eye also occurs elsewhere in the Mississippi River and recently has been reintroduced into several tributaries of the Mississippi River in which it historically occurred. This revised plan recommends that surveys be conducted in several specific areas to better describe other potentially important habitats.

The objective of the recovery plan is to provide a framework for the recovery of Higgins eye pearlymussel so that protection by the Act is no longer necessary. Higgins eye may be considered for reclassification from Endangered to Threatened when the following occurs: (1) At least five identified Essential Habitat Areas contain reproducing, self-sustaining populations of *L. higginsii* that are not threatened by zebra mussels; (2) a freshwater mussel toxicity database is completed, and specific sediment and water quality parameters in Essential Habitat Areas and reestablishment areas have been characterized; and (3) harvest of freshwater mussels is prohibited by law or regulation in Essential Habitat Areas.

Recovery will be achieved and the species removed from the list of Threatened and Endangered Wildlife (50 CFR part 17) when the following criteria are met: (1) Populations in at least five Essential Habitat Areas are reproducing, self-sustaining, not threatened by zebra mussels, and are sufficiently secure to assure long-term viability of the species; (2) zebra mussels are not present in locations where they or their offspring are likely to adversely affect *L. higginsii* populations in any of the five identified Essential Habitat Areas; (3) the use of double hull barges or other actions have alleviated the threat of spills to each of the identified Essential Habitat Areas; (4) *L. higginsii* habitat information and protective responses to conserve each of the identified Essential Habitat Areas have been incorporated into all applicable spill contingency planning efforts; and (5) harvest of freshwater mussels is prohibited by law or regulation in Essential Habitat Areas. Water quality criteria may be added to the delisting criteria upon completion of the tasks referred to in the reclassification criteria.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 27, 2004.

Dan Sobieck,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 04–15910 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

U.S. Fish and Wildlife Service and Confederated Salish and Kootenai Tribes Draft Annual Funding Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is making available for public review a draft annual funding agreement (draft AFA or draft agreement) with the Confederated Salish and Kootenai Tribes (CSKT) under the Indian Self-Determination and Education Assistance Act, as amended by the Tribal Self-Governance Act of 1994. This action is taken at the discretion of the Service to provide public review opportunity and solicit comments from the public for a 90-day period.

DATES: Written comments should be received by October 12, 2004.

ADDRESSES: You may submit written comments and information to the U.S. Fish and Wildlife Service, National Bison Range, 132 Bison Range Road, Moiese, Montana 59824 or by facsimile to (406) 644–2661. You may hand-deliver written comments to the National Bison Range at the address given above. You may send comments by electronic mail (e-mail) to *draftafapubliccomments@fws.gov*. All comments provided become part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of comments.

You may obtain copies of the draft AFA, by appointment, during normal business hours, from the U.S. Fish and Wildlife Service, National Bison Range, 132 Bison Range Road, Moiese, Montana 59824, (406) 644–2211. In addition, copies may be obtained from U.S. Fish and Wildlife Service Regional Office, Mountain-Prairie Region, National Wildlife Refuge System, P.O. Box 25486, Denver, Colorado 80225–0486, (303) 236–4306, or from the Confederated Salish and Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855, (406) 675–2700. The draft AFA is also available on the Internet at *http://mountain-prairie.fws.gov/cskt-fws-negotiation*.

FOR FURTHER INFORMATION CONTACT: Steve Kallin, Refuge Manager, National Bison Range, U.S. Fish and Wildlife Service, (406) 644–2211, extension 204.

SUPPLEMENTARY INFORMATION: In spring 2003, the Confederated Salish and

Kootenai Tribes submitted a formal request to reinitiate negotiations related to compacting of activities at the National Bison Range and ancillary properties (Northwest Montana Wetland Management District, Pablo and Ninepipe NWRs), pursuant to the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). In response to this request, negotiations between the CSKT and the Service on an annual funding agreement for that portion of the National Bison Range Complex within the Flathead Indian Reservation began in the summer of 2003.

The Tribal Self-Governance Act of 1994 was enacted as an amendment to Pub. L. 93–638 and incorporated as Title IV of that Act. The Self-Governance Act allows qualifying self-governance tribes the opportunity to request AFAs with the Bureau of Indian Affairs (BIA) and non-BIA agencies within the Department of the Interior. When dealing with non-BIA agencies, including the Service, qualifying tribes may enter into AFAs that would allow them to conduct certain activities of such non-BIA agencies. Eligible activities include Indian programs (programs created for the benefit of Indians because of their status as Indians); activities otherwise available to Indian tribes (any activity that a Federal agency might otherwise contract to outside entities); and activities that have a special geographic, historical, or cultural significance to an Indian tribe.

Pub. L. 93–638 and the regulations that implement the law (25 CFR part 1000.129) prohibit the inclusion of activities in an AFA that are inherently Federal functions. The Refuge has no special Indian programs. All activities of the Service on national wildlife refuges are for the benefit of the fish and wildlife resources, their habitats, and the American public. Activities that may have a special relationship with a tribe are the most promising for inclusion in an AFA. Whether to enter into an agreement with a tribe for these activities is discretionary on the part of the Service. The Service recognizes that many members of the CSKT who live near the National Bison Range have a cultural, historical, or geographical connection to the land and resources of the National Bison Range and, therefore, may feel very much part of these lands. The proposed draft agreement provides for the CSKT to perform certain programs, services, functions, and activities for the National Bison Range Complex during a 1-year period.

Dated: July 6, 2004.

Matt Hogan,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 04–15859 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Agua Caliente Band of Cahuilla Indians of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Principal Deputy Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 1.71 acres of land into trust for the Agua Caliente Band of Cahuilla Indians of California on April 21, 2004. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

FOR FURTHER INFORMATION CONTACT: George Skibine, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–4543 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR Part 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR Part 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On April 21, 2004, the Principal Deputy Assistant Secretary—Indian Affairs decided to accept approximately 1.71 acres of land into trust for the Agua Caliente Band of Cahuilla Indians of California under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 1.71 parcel is located with the exterior boundaries of the Agua Caliente Indian Reservation in Palm Springs, Riverside County, California. The parcel is an existing parking lot which supports the Band's Spa Resort and Casino.

The property is located within the exterior boundaries of the Agua Caliente Indian Reservation in Palm Springs, Riverside County, California and is described as follows:

A portion of Lot 69 of Section 14, Township 4 South, Range 4 East, San Bernardino Meridian as shown on the supplemental plat showing amended lottings in Section 14, Township 4 South, Range 4 East, San Bernardino Meridian prepared by the United States Department of the Interior, Bureau of Land Management, Washington, DC dated May 27, 1958, also shown as parcel 2 of parcel map No. 15314 recorded in Parcel Map Book 86 at page 100, records of Riverside County, California, described as follows: (*PRO Tab 5*)

Commencing at the Northeast corner of said Lot 69;

Thence North 89°45′04″ West along the North line of said Lot 69, a distance of 34.80 feet;

Thence South 00°14′56″ West, a distance of 15.00 feet to the true point of beginning.

Thence North 89°45′04″ West and parallel to the northerly line of said Lot 69, a distance of 229.20 feet to the westerly line of said Lot 69;

Thence South 00°04′20″ East along the westerly line of said Lot 69, a distance of 299.92 feet to the Southwest corner thereof;

Thence South 89°45′00″ East along the southerly line of said Lot 69, a distance of 249.11 feet;

Thence North 00°04′35″ West and parallel to the East line of said Lot 69, a distance of 280.03 feet to the beginning of a tangent curve concave southwesterly and having a radius of 20.00 feet;

Thence northwesterly along said curve through a central angle of 80°40′29″ and a length of 31.30 feet to the true point of beginning.

Also shown as parcel 2 of Parcel Map No. 15314, in the City of Palm Springs, County of Riverside, State of California, on file in Book 86 of parcel maps, page 100, in the Office of the County Recorder of said County.

Dated: April 21, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–15939 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–04–1320–EL; COC 67737]

Notice of Invitation for Coal Exploration License Application, Blue Mountain Energy, Inc. COC 67737; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Blue Mountain Energy, Inc. in a program for the exploration of unleased coal deposits owned by the United States of America beneath approximately 4,000.00 acres in Rio Blanco County, Colorado.

DATES: Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them by August 13, 2004.

ADDRESSES: Karen Purvis, CO–921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and Jeff Dubbert, Blue Mountain Energy, Inc., 3607 County Road #65, Rangely, Colorado 81648.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The application for coal exploration license is available for public inspection during normal business hours under serial number COC 67737 at the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the White River Field Office, 73544 Highway 64, Meeker, Colorado 81641. Any party electing to participate in this program must share all costs on a pro rata basis with Blue Mountain Energy, Inc. and with any other party or parties who elect to participate.

Dated: June 10, 2004.

Karen Purvis,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. 04–15890 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–050–5420–G507; NMNM 109216]

Notice of Application for Recordable Disclaimer of Interest; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Mr. Richard L. Epstein and Ms. Carolyn Kernberger submitted an application for a recordable disclaimer of interest from the United States, pursuant to Section 315 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1745), for the following described land, in Socorro County:

New Mexico Principal Meridian, New Mexico

A certain tract of land situate in Section 7, T. 2 S., R. 1 E., NMPM, being that accreted land lying westerly of and adjoining lot 3 and lot 4 of Section 7, T. 2 S., R. 1 E., NMPM.

A recordable disclaimer of interest, if issued, will confirm the United States has no interest in the subject lands. This notice is intended to notify the public of the pending application and the applicants' grounds supporting it. The acres for this disclaimer are 30.54.

FOR FURTHER INFORMATION CONTACT: Jon Hertz, Assistant Socorro Field Office Manager at (505) 835–0412.

SUPPLEMENTARY INFORMATION: On May 15, 2003, Mr. Richard L. Epstein and Ms. Carolyn Kernberger filed an application for a recordable disclaimer of interest for lands that lie between the western boundary of their property and the Rio Grande. According to the applicant's, a cloud on their title presently exists because BLM has determined that these lands along the Rio Grande have accreted to their property. BLM Cadastral Survey examined the documents provided and agreed with the assessment that the accreted lands westerly of lots 3 and 4, and the 1981 riverbank in T. 2 S., R. 1 E., NMPM, section 7, do indeed attach to the private uplands described as lot 3 and lot 4.

All persons who wish to present comments, suggestions, or objections in connection with the proposed disclaimer may do so by writing to the Field Office Manager, Socorro Field Office, 198 Neel Avenue, NW., Socorro, NM 87801 until October 12, 2004. If no objections are received, the disclaimer will be published shortly after these 90 days have lapsed.

Dated: April 21, 2004.

Jonathan Hertz,

Socorro Field Manager.

[FR Doc. 04–15895 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1610–DT]

Notice of Availability of the Final Environmental Impact Statement for the Jack Morrow Hills Coordinated Activity Plan and Proposed Green River Resource Management Plan Amendment, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the final environmental impact statement (FEIS) for the Jack Morrow Hills Coordinated Activity Plan (JMH CAP), and proposed Resource Management Plan (RMP) amendment.

SUMMARY: The Bureau of Land Management (BLM), in cooperation with the State of Wyoming, county governments, and conservation districts located within the planning area, announces the availability of the FEIS for the JMH CAP and Proposed Plan Amendment to the Green River RMP (1997). The FEIS documents the direct, indirect, and cumulative environmental impacts from the proposed CAP for the Jack Morrow Hills area within Sweetwater, Fremont, and Sublette Counties, Wyoming. The CAP will provide multiple use management direction for a variety of resource uses including energy resource development, recreational activities, livestock grazing, important wildlife habitat, cultural resources, special management areas (including areas of critical environmental concern), and other important resources and land uses in the planning area. The planning area encompasses approximately 622,000 acres, of which 585,000 acres are public land surface and Federal mineral estate administered by the BLM through its field office in Rock Springs, Wyoming.

Cooperating agencies under the National Environmental Protection Act (NEPA) in the preparation of the FEIS included the State of Wyoming and the following local Wyoming government entities: Sublette County, Popo Agie Conservation District, Sublette County Conservation District, Sweetwater County Conservation District, Fremont County, and Sweetwater County.

BLM published the Supplemental Draft Environment Impact Statement

(SDEIS) for the JMH CAP area on February 14, 2003, and made it available for a 90-day public review and comment period. The distribution list included the agencies, companies, organizations and individuals that had expressed an interest during scoping. During the SDEIS review period, the BLM held public meetings in Rock Springs and Lander, Wyoming, to provide the public an opportunity to submit oral and written comments. All comments presented throughout the process have been considered during the preparation of the Final EIS.

DATES: The JMH CAP FEIS and Proposed Green River RMP Amendment will be available for review for 30 calendar days from the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register**. Under the provisions of 43 Code of Federal Regulations (CFR) 1610.5–2, protests of the proposed BLM Green River RMP amendment must be filed with the BLM Director in accordance with instructions in the FEIS and in the Supplemental Information section of this notice. Protests of the proposed amendment to the Green River RMP will be accepted no later than 30 calendar days from the date the EPA publishes its NOA in the **Federal Register**.

ADDRESSES: A copy of the FEIS has been sent to affected Federal, State, and local government authorities, and to other interested parties. The document will be available electronically on the following Web site: *www.wy.blm.gov/jmhcap*.

Copies of the FEIS are available for public inspection at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.
- Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.
- Bureau of Land Management, Lander Field Office, 1335 Main Street, Lander, Wyoming 82520.

FOR FURTHER INFORMATION CONTACT: Michael R. Holbert, Field Manager, or Renee Dana, Jack Morrow Hills CAP Team Leader, Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901, 307–352–0256.

SUPPLEMENTARY INFORMATION: The FEIS analyzes five alternatives, including the no action alternative, ranging from preservation to full resource development. The alternatives provide and analyze specific management goals and objectives for the JMH CAP area. The approved CAP will include land and resource management decisions for fluid mineral leasing and mineral location that were deferred in the 1997 Green River RMP. The analysis conducted for the JMH CAP FEIS may be used to modify mineral decisions for the balance of the Green River RMP planning area. Consistent with regulations at 43 CFR 1610.5–5, modification or revision of mineral decisions made in the Green River RMP will require an amendment to that plan.

The BLM prepared and focused the impact analyses in the JMH CAP FEIS based on issues raised by the public during preparation of the Green River RMP and during the public scoping process for the CAP. The FEIS describes the physical, biological, cultural, historical, and socioeconomic resources in and surrounding the planning area. The JMH CAP provides management direction for the protection of important resources (*e.g.*, desert elk and other big game habitat, unique sand dune-mountain shrub habitat, stabilized sand dunes), while allowing for appropriate levels of leasing and development of energy resources, recreational activities, livestock grazing, and other public land and resource uses.

In addition, the JMH CAP FEIS includes use of a monitoring, evaluation, and implementation management approach. Based on monitoring of impacts, BLM proposes to adjust, as needed, management of transportation planning, off-highway-vehicular use designations, livestock grazing practices, recreational activities, rights-of-way corridors and avoidance areas, and prescriptions for managing wildlife habitat.

Of the 585,000 acres of Federal mineral estate administered by the BLM in the JMH planning area, 85,000 acres are within the core area where the Green River RMP fluid mineral leasing and mineral location decisions were deferred in 1997. The JMH CAP planning area includes the Steamboat Mountain, Greater Sand Dunes, Oregon Buttes, and White Mountain Petroglyphs Areas of Critical Environmental Concern (ACEC). Seven Wilderness Study Areas (WSAs) and part of the South Pass Historic Landscape ACEC are also located in the planning area.

Proposed Plan: The BLM's Proposed Plan for the JMH CAP provides opportunities to use and develop the planning area by providing a balance of uses. The Proposed Plan comprises a complementary mix of appropriate elements from each alternative; however, the Proposed Plan also contains management actions (including an implementation, monitoring, and evaluation strategy) that were not a component of any of the other alternatives. As part of this implementation, monitoring and evaluation management strategy, portions of the planning area would be available for development and other surface disturbance activities, following NEPA analysis and the identification of appropriate mitigation. Other portions of the planning area would remain unavailable to new fluid mineral leasing. Boundaries of one existing ACEC would be expanded to protect sensitive resources.

No Action Alternative: The No Action Alternative is defined as a continuation of the present course of management until that management is changed. Ongoing programs initiated under existing legislation and regulations and the Green River RMP (1997) would continue. This alternative describes the current resource and land management direction for the JMH CAP planning area represented by the decisions stated in the Green River RMP, which provides for multiple use management of public lands and resources to meet foreseeable needs. No additional lands would be considered for leasing for fluid minerals in what is known as the ''core'' area, and there would not be any changes proposed for ACECs. Oil and gas lease suspensions would be lifted to allow for a resumption of oil and gas development activity on existing leases in the JMH planning area, including the core area.

Alternative 1—Development: Alternative 1 provides for expanded opportunities to use and develop the planning area. Alternative 1 emphasizes mineral development, allowing for new leases and permits for oil and gas and for mineral development throughout the planning area, consistent with existing laws and regulatory requirements and statutory withdrawals and closures. Additional lands would be considered for fluid mineral leasing in the JMH planning area, including the core area, and there would not be any changes proposed for ACECs.

Alternative 2—Preservation: Alternative 2 emphasizes opportunities to preserve and protect the planning area while reducing development opportunities. The alternative focuses on improving and protecting habitat for wildlife and sensitive plant and animal species; improving riparian areas and water quality; and protecting historic, cultural, and Native American sites. Boundaries of existing ACECs would be expanded to protect sensitive resources, and additional ACECs and Research Natural Area designations would be pursued. Additional lands would not be

considered for fluid mineral leasing within the JMH planning area, including the core area. While some development or activities could occur in specific portions of the planning area with appropriate mitigation measures, alternative 2 would not allow development in areas with competing resource uses and would close or designate portions of the planning area to restrict land uses.

Alternative 3—Conservation: Alternative 3 provides opportunities to use and develop the planning area while ensuring resource protection. This alternative would allow development and activities to occur throughout the planning area, but emphasizes the protection of sensitive resources through appropriate mitigation. Mitigation requirements necessary to ensure the protection of sensitive resources would be determined through an adaptive management approach to resource use and protection. Additional lands would be considered for fluid mineral leasing in the JMH planning area, including the core area. Boundaries of existing ACECs would be expanded as necessary to protect sensitive resources.

Agency-Preferred Alternative: The BLM's preferred alternative is the Proposed Plan.

Proposed Decisions that would amend the land use plan: The Green River RMP (1997) would be amended to include management activities at the level analyzed in the FEIS and to adopt the new conditions of use. The Proposed Plan also changes oil and gas leasing allocation decisions, as these decisions were deferred from the Green River RMP. An amendment to the RMP would provide complete and concise descriptions of applicable management practices for oil and gas development.

The resource management planning process includes an opportunity for administrative review of proposed land use plan decisions during a 30-day protest period of the JMH CAP FEIS. Any person who participated in the planning process for the JMH CAP EIS and has an interest which is, or may be, adversely affected, may protest the JMH CAP FEIS proposed land use plan decisions to the BLM Director.

Ultimately, the BLM State Director's decision whether to adopt, reject or modify the proposed RMP amendment will be documented in a Record of Decision issued under the authority of the Federal Land Policy and Management Act, as codified at 43 CFR part 1610. Decisions regarding site-specific implementation activities will be subject to further NEPA analysis and appeal, as provided by applicable regulations.

How To Submit a Protest

Publication of this FEIS affords the public the opportunity to protest the JMH CAP. Instructions for filing a protest with the Director of the BLM regarding the State Director's proposed amendment to the Green River RMP may be found at 43 CFR 1610.5. Any person who participated in the planning process and has an interest in, or may be adversely affected by, the approval of the proposed Plan Amendment may protest such approval. A protest may raise only those issues submitted for the record during the planning process. The protest must be in writing and must be filed with the Director within 30 days from the date the EPA publishes the NOA for this FEIS in the **Federal Register**. The protest must contain:

i. The name, mailing address, telephone number, and interest of the person filing the protest;

ii. A statement of the issue or issues being protested;

iii. A statement of the part, or parts, of the plan or amendment being protested;

iv. A copy of all documents addressing the issue, or issues, that were submitted during the planning process by the protesting party or an indication of the date the issue, or issues, were discussed for the record; and

v. A concise statement explaining why the State Director's decision is believed to be wrong.

The Director's decision on the protest will be in writing and will set forth the reasons for the decision. The decision will be sent to the protesting party by certified mail, return receipt requested. The Director's decision is the final decision for the Department of the Interior.

Protest Filing Addresses: Written protests filed by Surface mail: U.S. Department of the Interior, Bureau of Land Management, Director (210), Attn: Ms. Brenda Williams, Protest Coordinator, P.O. Box 66538, Washington, DC 20035. Overnight mail: U.S. Department of the Interior, Bureau of Land Management, Director, Protest Coordinator (WO–210), 1620 L Street, NW., Room 1075, Washington, DC 20036. Electronic mail and facsimile protests will be considered only if the protesting party provides BLM with the original letter by either regular or overnight mail postmarked by the close of the protest period. Until the BLM receives the original letter of protest, it will consider the electronic or facsimile version as an advance copy. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Bhudgens@blm.gov.* Only original protest letters that meet content, delivery, and deadline requirements as described above will be considered valid protests.

Dated: June 23, 2004.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 04–15879 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare a Resource Management Plan and Environmental Impact Statement for Eastern San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), as amended; the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), as amended; and the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the Bureau of Land Management (BLM) will prepare a Resource Management Plan (RMP) for Eastern San Diego County and a Environmental Impact Statement (EIS) to evaluate the effects of land and resource management decisions in the Eastern San Diego County Planning Area.

DATES: BLM will accept written and electronic comments on the scope of the RMP until October 12, 2004 and received by October 22, 2004, and electronic comments received by October 12, 2004. Additional opportunities for public involvement, including a schedule of public meetings, will be announced separately from this notice in local newspapers.

ADDRESSES: You may submit comments by the following methods: Written: Lynnette Elser, Eastern San Diego County Resource Management Plan and EIS, 1661 South 4th Street, El Centro, CA 92243. Electronic: *lelser@ca.blm.gov.*

FOR FURTHER INFORMATION CONTACT: For general information, including information on how to comment, you may contact Lynnette Elser, Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA or phone (760) 768–4400.

SUPPLEMENTARY INFORMATION: Individual respondents may request confidentiality. If you wish BLM to withhold your name or street address, except for the city or town, from public view or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. We will honor requests to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Background Information: The Eastern San Diego County Planning Area encompasses 98,902 acres of land administered by the BLM in Eastern San Diego County, California. BLM lands within the Planning Area are administered by the El Centro Field Office and are immediately west of the California Desert Conservation Area. Land management within the Planning Area is currently guided by the Eastern San Diego County Management Framework Plan, completed in 1981. There are two Wilderness Areas (Carrizo Gorge and Sawtooth Mountain) within the Planning Area. There are also four Wilderness Study Areas. Two Areas of Critical Environmental Concern (Table Mountain and McCain Valley) are designated. Lark Canyon Off-Road Vehicle Area is managed for vehicular recreation. Remaining areas are managed in accordance with Multiple Use Classes.

The intent of the current Resource Management Plan and EIS preparation process is to analyze and update land and resource management objectives within the Planning Area. The Resource Management Plan will consider: impacts posed by rapid population and community growth, the need to make resource decisions that are scientifically sound, legally defensible and sustainable resource decisions, the need to provide access to significant energy sources and communication sites, the need for utility corridors, the need for continuation of grazing activities, the need to maximize use of public lands in species recovery and habitat conservation, and the need to provide adequate facilities for safe recreation and visitation on the public lands.

Issues to be addressed in the Resource Management Plan will include recreation, off-highway vehicle use, routes-of-travel designations, wildlife, botanical resources, endangered species, cultural resources, Native American concerns, visual resources, livestock grazing, wilderness, fire management, and mining. Existing wilderness study areas designations will be evaluated. Boundaries and existence of currently designated wilderness areas will not be changed. Compatibility with management plans proposed by other public land management entities for adjacent lands will be considered.

The Resource Management Plan and EIS will be prepared by an interdisciplinary team with specialists for recreation, wilderness, botany, biology, archeology, wildlife, range management, realty, visual resources, geology and mining, range management and planning.

The approved Resource Management Plan will replace the existing East San Diego County Framework Management Plan as the document guiding land and resource management decisions on BLM-administered lands in the Planning Area.

Lynnette Elser,

Acting Field Manager.

[FR Doc. 04–15887 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1330–EO]

Notice of a 30-Day Public Comment Period on the Establishment of the Mechanically Mineable Trona Area, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice solicits public comment as to whether the area of Sweetwater County, Wyoming, described below meets the criteria set forth below for a Mechanically Mineable Trona Area (MMTA).

DATES: Comments should be submitted to the below address no later than August 13, 2004.

ADDRESSES: Written comments should be addressed to: Assistant Field Manager, Minerals and Lands, Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Ted Murphy, Assistant Field Manager, Rock Springs Field Office, at (307) 352–0321.

SUPPLEMENTARY INFORMATION: An MMTA generally defines an area underlain by trona (sodium) deposits of the proper depth, thickness, and quality to support extraction by mining techniques that require an underground workforce. The lands described below are proposed to be included within the MMTA:

Sixth Principal Meridian, Wyoming

T. 14 N., R. 108 W.,
Sec. 4 to 7 inclusive:
Sec. 18.
T. 14 N., R. 109 W.,
Sec. 1;
Sec. 12 and 13.
T. 15 N., R. 108 W.,
Sec. 2 to 10 inclusive;
Sec. 15 to 22 inclusive;
Sec. 27 to 34 inclusive.
T. 15 N., R. 109 W.,
Sec. 1 and 2;
Sec. 11 to 14 inclusive;
Sec. 23 to 25 inclusive;
Sec. 36.
T. 16 N., R. 108 W.,
Sec. 3 to 10 inclusive;
Sec. 15 to 22 inclusive;
Sec. 26 to 35 inclusive.
T. 16 N., R. 109 W.
Sec. 1 to 30 inclusive;
Sec. 35 and 36.
T. 16 N., R. 110 W.,
Sec. 1 and 2;
Sec. 11 to 15 inclusive;
Sec. 22 to 27 inclusive.
T. 17 N., R. 108 W.,
Sec. 5 to 9 inclusive;
Sec. 16 to 22 inclusive;
Sec. 26 to 35 inclusive.
T. 17 N., R. 109 W.,
All.
T. 17 N., R. 110 W.,
Sec. 1 to 6 inclusive;
Sec. 8 to 17 inclusive;
Sec. 22 to 27 inclusive;
Sec. 35 and 36.
T. 17 N., R. 111 W.,
Sec. 1 to 3 inclusive.
T. 18 N., R. 108 W.,
Sec. 6 and 7;
Sec. 18 to 20 inclusive;
Sec. 29 to 32 inclusive.
T. 18 N., R. 109 W.,
All.
T. 18 N., R. 110 W.,
All.
T. 18 N., R. 111 W.,
Sec. 1 to 4 inclusive;
Sec. 5, lots 1 and 2, S½NE¼, and SE¼;
Sec. 8, E½;
Sec. 9 to 16 inclusive;
Sec. 17, E½;
Sec. 20, E½;
Sec. 21 to 28 inclusive;
Sec. 29, E½;
Sec. 32, E½;
Sec. 33 to 36 inclusive.
T. 19 N., R. 108 W.,
Sec. 5 and 6.
T. 19 N., R. 109 W.,
Sec. 1 to 10 inclusive;
Sec. 16 to 22 inclusive;
Sec. 26 to 36 inclusive.
T. 19 N., R. 110 W.,
All.
T. 19 N., R. 111 W.,
Sec. 1 to 4 inclusive;
Sec. 9 to 16 inclusive;
Sec. 21 to 28 inclusive;
Sec. 33 to 36 inclusive.
T. 20 N., R. 108 W.,

Sec. 6 to 8 inclusive;
Sec. 17 to 20 inclusive;
Sec. 29 to 32 inclusive.
T. 20 N., R. 109 W.,
All.
T. 20 N., R. 110 W.,
Sec. 1;
Sec. 8 and 9;
Sec. 12 and 13;
Sec. 15 to 22 inclusive;
Sec. 24 to 36 inclusive.
T. 20 N., R. 111 W.,
Sec. 13 and 14;
Sec. 21, E½E½;
Sec. 22 to 27 inclusive;
Sec. 28, E½;
Sec. 33 to 36 inclusive.
T. 21 N., R. 108 W.,
Sec. 16 and 17;
Sec. 18, lot 8, SE¼SW¼, and S½SE¼;
Sec. 19 to 22 inclusive;
Sec. 27 to 34 inclusive.
T. 21 N., R. 109 W.,
Sec. 24 to 27 inclusive;
Sec. 34 to 36 inclusive.

Containing 317,321.45 acres, more or less.

Dated: June 3, 2004.

Robert A. Bennett,

State Director.

[FR Doc. 04–15892 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU78025]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU78025 for lands in Uintah County, Utah, was timely filed and required rentals accruing from January 1, 2004, the date of termination, have been paid.

FOR FURTHER INFORMATION CONTACT: Teresa Catlin, Chief, Branch of Fluid Minerals at (801) 539–4122.

SUPPLEMENTARY INFORMATION: The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The $500 administrative fee for the lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU78025, effective January 1, 2004, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Teresa Catlin,

Chief, Branch of Fluid Minerals.

[FR Doc. 04–15886 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–76625]

Notice of Realty Action: Change of Use and Lease/Conveyance for Recreation and Public Purposes, Las Vegas, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for change of use and lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a public park.

FOR FURTHER INFORMATION CONTACT: Anna Wharton, Supervisory Realty Specialist, (702) 515–5095.

SUPPLEMENTARY INFORMATION: This land was previously classified, segregated and leased to the Clark County Library District under BLM serial number N–66077. **Federal Register** notification was published on January 20, 2000. The public lands were determined suitable for Recreation and Public Purposes on March 20, 2000. The Clark County Library District lease N–66077, was relinquished on July 28, 2003. The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for change of use and lease/conveyance for recreational or public purpose under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). N–76625—The City of Las Vegas proposes to use the land for a public park.

Mount Diablo Meridian

T. 19 S., R. 60 E., Sec. 29,
S½SE¼NE¼SE¼NE¼, SE¼SE¼NE¼.

Containing 11.25 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The City of Las Vegas proposes to build a low impact park that will consist of picnic areas, walking trails, open space and tot lot play areas. This land is located in the northwest sector of the Las Vegas valley and will serve citizens of all ages and abilities. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. All valid and existing rights.

2. Those rights for public utility purposes which have been granted to Nevada Power Company by Permit No. N–77096, under the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

3. Those rights for public utility purposes which have been granted to the Las Vegas Valley Water District by permit No. N–55369, under the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

4. Those rights for public utility purposes which have been granted to the Las Vegas Valley Water District by permit No. N–66231, under the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

5. Those rights for public utility purposes which have been granted to Central Telephone by permit No. N–53652, under the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

6. Those rights for sewer purposes which have been granted to the City of Las Vegas by permit No. N–62107, under the Federal Land Policy and Management Act of October 21, 1976 FLPMA).

7. Those rights for sewer purposes which have been granted to the City of Las Vegas by permit No. N–74262, under the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

8. Those rights for natural gas pipeline purposes which have been granted to Southwest Gas Corporation by permit No. N–57864 under Sec. 28 of the Mineral Leasing Act of 1920.

Detailed information concerning this action is available for review at the

office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada. The above described land remains segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. Interested parties may submit comments regarding the proposed lease/conveyance to the Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89130 until August 30, 2004.

Classification Comments: Since the above described lands were previously classified and segregated for Recreation and Public Purposes under lease N–66077, and published in the **Federal Register** on January 20, 2000, no classification comments are being taken.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park facility. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The lands will not be offered for lease/conveyance until after the closure of the comment period.

Dated: May 26, 2004.

Sharon DiPinto,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 04–15888 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–04–1430–EU; GP4–0159]

Direct Land Sale of Public Lands, OR 58506

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: An 8.78 acre parcel in Klamath County, Oregon, is being considered for a direct sale to the Bonanza View Dairy to resolve an unintentional unauthorized use involving lands that are under the jurisdiction of the BLM. Bonanza View Dairy owns the adjacent lands next to the BLM parcels. BLM and the Public have legal access to the public lands via an easement purchased from Bonanza View Dairy on August 28, 1972. No significant resource values will be affected by this disposal. The parcels proposed for sale are identified as suitable for disposal in the Klamath Falls Resource Area Resource Management Plan, dated June 2, 1995.

DATES: Submit comments on or before August 30, 2004.

ADDRESSES: Address all written comments concerning this notice to Jon Raby, Klamath Falls Resource Area Field Manager, Klamath Falls Field Office, 2795 Anderson Ave., Building 25, Klamath Falls, Oregon 97603. Electronic format submittal will not be accepted.

FOR FURTHER INFORMATION CONTACT: Linda Younger, Realty Specialist, at (541) 883–6916.

SUPPLEMENTARY INFORMATION: The following described public land in Klamath County, Oregon, is suitable for sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719). The parcels proposed for sale are identified as follows:

Willamette Meridian, Oregon

T. 39 S., R. 11 E.,
Sec. 21, lots 1 and 4.

The area described contains 8.78 acres, more or less. These parcels have been examined and found suitable for sale at not less than the appraised market value. The appraised market value for these parcels has been determined to be $3,160.00.

In accordance with 43 CFR 2711.3–3(a)(5), direct sale procedures may be utilized to resolve inadvertent unauthorized use or occupancy of the lands.

The proponent, Bonanza View Dairy, will be allowed 30 days from receipt of a written offer to submit a deposit of at least 20 percent of the appraised market value of the parcel, and 180 days thereafter to submit the balance.

The following rights, reservations, and conditions will be included in the patent conveying the land:

1. A reservation to the United States for a right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States for all oil, gas and geothermal resources in the land in accordance with Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

3. The patent would also include a notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620) holding the United States harmless from any release of hazardous materials that may have occurred as a result of the unauthorized use of the property by other parties.

The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer constitutes an application for conveyance of the mineral interest. In addition to the full purchase price, a nonrefundable fee of $50 will be required for the purchase of the mineral interests to be conveyed simultaneously with the sale of the land, with the exception of all leaseables, including oil, gas and geothermal interests, which will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

The land described is segregated from appropriation under the public land laws, including the mining laws, with the exception of sales under the above cited statutes, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

Detailed information concerning this land sale, including the reservations, sale procedures and conditions, appraisal, planning and environmental documents, and mineral report is available for review at the Klamath Falls Field Office, Bureau of Land Management, 2795 Anderson Ave. Building 25, Klamath Falls, Oregon 97603.

Objections will be reviewed by the Lakeview District Manager who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law.

BLM will make available for public inspection in their entirety all

submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

(Authority: 43 CFR 2711.1–2)

Dated: April 19, 2004.

Jon Raby,

Field Manager, Klamath Falls Resource Area.

[FR Doc. 04–15884 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–035–04–1430–ES; GP–04–178]

Recreation and Public Purposes (R&PP) Act Classification, OR 60165

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: An area of approximately 1.16 acres of public land in Baker County has been examined and found suitable for classification for lease to Baker County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The county proposes to use the land to establish a small roadside rest area along Highway 86 in eastern Oregon.

DATES: Submit comments on or before August 30, 2004.

ADDRESSES: Address all written comments concerning this Notice to Penelope Dunn Woods, Field Manager, Baker Field Office, 3165 10th Street, Baker City, Oregon 97814. Electronic format submittal will not be accepted.

FOR FURTHER INFORMATION CONTACT: Steve Davidson, Realty Specialist, Baker Field Office, Vale District, at (541) 523–1349.

SUPPLEMENTARY INFORMATION: The proposed lease area lies adjacent to Highway 86 and is within the following described public land:

Willamette Meridian, Oregon

T. 9 S., R. 44 E.,
Sec. 6, lot 4.

The proposed lease area contains 1.16 acres, more or less, in Baker County, Oregon. The land is not needed for Federal purposes. The lease is consistent with the Baker Resource Management Plan of July 12, 1989, and would be in the public interest.

The lease, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act, and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease or classification of the land to the above address.

Classification Comments: Interested parties may submit written comments involving the suitability of the land for a roadside rest area. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit written comments regarding the specific use proposed in the application and site plan, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a roadside rest area.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to request that the BLM consider withholding your name, street address and other contact information, *e.g.*, Internet address, FAX or phone number, from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public inspection in their entirety all submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

(Authority: 43 CFR 2741.5(h)(3))

Dated: May 28, 2004.

Penelope Dunn Woods,

Field Manager, Baker Resource Area.

[FR Doc. 04–15885 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–025–1232–EA–NV06; Special Recreation Permit # NV–025–04–02]

Notice of Intent To Temporarily Close Public Lands: Pershing County and Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that certain lands will be temporarily closed or restricted, and certain activities will be temporarily prohibited, in and around the Burning Man event site, Pershing and Washoe Counties, Nevada, for camping, vehicle use, fire use, and aircraft landing from 0600 hours, August 25, 2004, to 2200 hours, September 6, 2004. Certain lands will be temporarily closed or restricted, and certain activities will be temporarily prohibited, in the Winnemucca District in Pershing and Washoe Counties, Nevada, for fireworks use and firearms use from 0600 hours, August 16, 2004, to 2200 hours, September 20, 2004. A closure to all public uses will be in effect inside the perimeter fence surrounding the event from August 27, 2004 to September 6, 2004. These closures, restrictions and prohibitions are being made in the interest of public safety at and around the public lands location of an event known as the Burning Man Festival. This event is expected to attract approximately 30,000 participants this year. The lands involved are located in northwestern Nevada partially within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area.

DATES: August 16, 2004 to September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Dave Cooper, National Conservation Area Manager, Bureau of Land

Management, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445, telephone: (775) 623–1500.

SUPPLEMENTARY INFORMATION:

Public Camping Surrounding the Event Is Prohibited in the Following Areas

T33N, R24E: W½Sec1; Sec2; Sec3; Sec4; Sec9; Sec10; Sec11; W½Sec12; N½NW¼Sec15; N½Sec16; and T33½N, R24E: Sec33; Sec34; Sec35; W½Sec36. The area within 50 yards of and on the outside of the perimeter fence will also be closed to camping. These areas are closed during the event period, August 30, 2004 to September 6, 2004, with the exception of defined camping areas designated and provided by the Black Rock City LLC, an authorized ''pilot camp'' and BLM-authorized event management-related camps.

Operation of Motorized Vehicles at a Rate of Speed That Causes a Dust Plume Higher Than the Roof of the Vehicle, Is Prohibited in the Following Areas

T33N, R24E: W½Sec1; Sec2; Sec3; Sec4; Sec9; Sec10; Sec11; W½Sec12; N½NW¼Sec15; N½Sec16; and T33½N, R24E: Sec33; Sec34; Sec35; W½Sec36. These areas are closed during the event period, August 30, 2004 to September 6, 2004, with the exception of BLM, medical, law enforcement, firefighting vehicles and Burning Man staff as designated by the BLM Authorized Officer.

Operation of Motorized Vehicles Is Prohibited on the Following Public Lands

T33N, R24E: Sec2; Sec3; Sec4; Sec9; Sec10; Sec11; and T33½N, R24E: Sec33; Sec34; Sec35. These legally described areas that are within the event boundary and 50 feet from the event boundary are closed during the Burning Man event, from August 30, 2004 to September 6, 2004, with the following exceptions: the main playa road that provides access between 3-mile entrance and Trego playa entrance; participant arrival and departure on designated routes; art vehicles registered with Burning Man; Black Rock City LLC staff and support; BLM, medical, law enforcement, and firefighting vehicles and motorized skateboards with or without handlebars. Art vehicles must register with Burning Man/Black Rock City LLC and must provide evidence of registration at all times.

The Following Public Lands are Closed to Public Use

T33N, R24E: NE¼S½Sec4; SE¼Sec5; NE¼S½Sec8; Sec9; W½Sec10; N½NW¼Sec15; N½Sec16; and T33½N, R24E: SE¼Sec33; SW¼Sec34. For event safety near the entrance road and airstrip, playa areas southwest, west and northwest of the event are closed during the Burning Man event period, from midnight August 30, 2003 to 2200 hours September 6, 2003. These areas are closed to all uses except those performed by BLM personnel, law enforcement, emergency medical services, and Burning Man staff as designated by the authorized BLM officer.

Black Rock City LLC/Burning Man Will Abide by Fire Restriction Orders, Except for the Following When Officially Approved by Black Rock City LLC in Coordination With BLM

Official art burns, authorized event fireworks, and other authorized fires using Black Rock City LLC/Burning Man-supplied fire barrels or approved platforms. Fire Restriction Orders may be in effect pursuant to 43 CFR 9212.2, 36 CFR 261.50(a)(b) for all lands managed by the BLM, Winnemucca Field Office.

The Use, Sale or Possession of Personal Fireworks Within the Burning Man Event Perimeter Fence Is Prohibited on the Following Public Lands From August 30th, 2004, Through September 6, 2004

T33N, R24E: Sec2; Sec3; Sec4; Sec9; Sec10; Sec11; and T33½N, R24E: Sec33; Sec34; Sec35, with the exception of fireworks approved by Black Rock City LLC and used as part of an official Burning Man art burn event.

Possession of Firearms Is Prohibited on the Following Public Lands From August 16, 2004, Through September 20, 2004

T33N, R24E: Sec2; Sec3; Sec4; Sec9; Sec10; Sec11; and T33½N, R24E: Sec33; Sec34; Sec35. This closure is in effect inside the Burning Man event perimeter fence, with the exception of county, state and federal certified law enforcement personnel under the color of law. ''Firearm'' means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion (Nevada Revised Statute 202.253).

Discharge of Firearms Is Prohibited on the Following Public Lands From August 16, 2004, Through September 20, 2004

T33N, R24E: Sec1; Sec2; Sec3; Sec4; Sec 5; E½Sec6; Sec8; Sec9; Sec10; Sec11; Sec12; N½SW¼Sec13; Sec14; Sec15; Sec16; E½NW¼Sec17; NE¼Sec21; N½Sec22; NW¼Sec23; and T33N, R25E: Sec4; W½NW¼NE¼Sec9; and T33½N, R24E: Sec25; Sec26; Sec27; Sec28; Sec29; Sec32; Sec33; Sec34; Sec35; Sec36; T34N, R24E: NE¼S½Sec33; Sec34; Sec35; S½Sec36; T34N, R25E: Sec33. This closure description applies with the exception of law enforcement officers under color of law.

Aircraft are Prohibited From Landing, Taking off, and Taxiing on the Following Public Lands From 0600 Hours on August 27, 2004, Through September 6, 2004 at 2200 Hours

T33N, R23E: E½Sec25; and T33N, R24E: Sec1; Sec2; Sec3; Sec4; SE¼Sec5; NE¼S½Sec8; Sec9; Sec10; Sec11; Sec12; W½Sec13; Sec14; Sec15; Sec16; Sec17; NE¼S½Sec18; Sec19; Sec20; Sec21; N½Sec22; NW¼Sec28; Sec29; NE¼Sec30; and T33N, R25E: N½Sec2; N½Sec3; Sec4; and T33½N, R24E: Sec25; Sec26; Sec27; Sec28; Sec33; Sec34; Sec35; Sec36; and T34N, R24E: NE¼S½Sec23; Sec24; Sec25; Sec26; SE¼Sec27; E½Sec33; Sec34; Sec35; Sec36; and T34N, R25E: Sec16; Sec21; S½Sec22; SW¼Sec26; Sec27; Sec28; Sec33; Sec34; Sec35. This closure applies to the playa for approximately five miles in all directions from the event boundary during the event, with the exception of an authorized event landing strip for Burning Man staff and participants, law enforcement and emergency medical services. This airstrip is the only location where Burning Man staff and participant aircraft may land. Emergency aircraft such as Care Flight, Sheriff's Office or Medical Ambulance Transport System helicopters engaged in official business may land in other locations when circumstances require it.

A map showing these temporary closures, restrictions and prohibitions is available from the following BLM office: BLM-Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

The map may also be viewed on the Field Office Web site at: *http://www.nv.blm.gov/winnemucca.*

Penalty

Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12

months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Authority: 43 CFR 8364.1.

Vicki L. Wood,

Acting Field Manager.

[FR Doc. 04–15899 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–035–00–1050–00; HAG 04–0083]

Notice of Proposed Supplementary Rules on Public Land in Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is publishing proposed supplementary rules that implement vehicular closure and restrictions to protect the values of the Snake River area and the Sheep Mountain Wilderness Study Area (WSA)/Area of Critical Environmental Concern (ACEC) on public lands along the West side of the Snake River between Oxbow and Brownlee Dam in Baker County, Oregon. The purpose of the closure and restrictions are to allow for the rehabilitation of newly constructed roads, trails, and ways, created or opened during the Idaho Power *230/69 KV* powerline construction project, and to protect wildlife habitat, native vegetation, fragile soils, and scenic, cultural, and natural values on public land in this part of the Snake River and Sheep Mountain WSA/ACEC. These closure and restriction orders will be in effect on 9,241 acres of public land, and do not affect, limit or close any previously existing public access.

DATES: You must submit your comments for these proposed supplementary rules to BLM at the appropriate address below on or before August 13, 2004. BLM may not consider any comments received after the above date in making its decisions on the final rule.

ADDRESSES: Mail or personal delivery: Field Manager, Bureau of Land Management, Baker Resource Area, 3165 10th Street, Baker City, Oregon 97814.

FOR FURTHER INFORMATION CONTACT: Baker Field Manager Penelope Dunn Woods, at (541) 523–1256. Persons who use a telecommunications device for the deaf (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

I. Public Comment Procedures

Electronic Access and Filing Address

You may view an electronic version of this proposed rule at BLM's Internet home page: *http://www.or.blm.gov/Vale.* Click on the link labeled ''NEPA/PLANNING''.

Written Comments

Written comments on the proposed rule should be specific, confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (see **ADRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the Baker Field Office, 3165 10th Street, Baker City, OR 97814 during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Discussion of the Supplementary Rules

These supplementary rules will apply to the public lands within the Baker Resource Area of the Vale District. BLM has determined these rules necessary to protect the area's natural resources, to provide for safe public recreation and public health, and to reduce the potential for damage to the environment.

The public lands in Baker County, Oregon affected by this order include all BLM-managed public lands located within the identified sections, and all other BLM lands located between these sections and the Idaho Power Oxbow-Brownlee Road along the Oxbow Reservoir:

Willamette Meridian, Oregon

T. 7S., R. 47E.,
  Section 25, SE¼SE¼;
  Sections 36, all except for NW¼NW¼.
T. 7S., R. 48E.,
  Section 17, E½SE¼;
  Section 19, SE¼SE¼;
  Section 20, E½NE¼, SW¼NE¼, E½SW¼, SW¼SW¼, SW¼;
  Section 30, E½NE¼, SW¼NE¼, E½SW¼, SW¼SW¼, SE¼;
T. 8S., R. 47E.,
  Sec. 1, lots 1 thru 4, inclusive, 7 thru 10, inclusive, 15, 16;
  Sec. 2, lot 1;
  Sec. 12, lots 1, 2, 7 thru 10, inclusive, 15, 16;
  Sec. 13, all lands east of BLM road #7644;
  Sec. 24, all lands east of BLM road #7644;
  Sec. 25, all except those lands west of BLM road #7644.

This closure and use restriction order is the minimum required to mitigate the impacts of unregulated off-highway vehicle use on newly disturbed soil, roads, trails, and ways; to protect wildlife habitat, cultural resources, scenic values, native vegetation and fragile soils in the area; and to respond to concerns of public health and safety, wildfire, weed control and resource degradation. Actions to implement the closure and restrictions will be undertaken.

Private Lands: This order is in no way intended to affect the legal rights, or existing rights-of-way, of adjacent private land owners, or their interests within private lands within the closure area. Further, this order does not infer any BLM jurisdiction over private lands located within the closure area.

Copies of the closure and restriction order and maps showing the location of the closed lands and roads are available from the Baker Field Office, 3165 10th Street, Baker City, OR 97814.

III. Procedural Matters

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed rule does not represent a government action capable of interfering with constitutionally protected property right as it only applies to lands managed by the BLM. Therefore, the Department of the

Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism (Replaces Executive Orders 12612 and 13083)

The proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (Replaces Executive Order 13084)

In accordance with Executive Order 13175, we have found that this proposed rule does not include policies that have tribal implications. The rule expressly does not apply to Indian lands (*see* section 3601.12). The regulations do not bar Indians or tribes from buying mineral materials from public lands, although the abundance of these materials on Indian lands has made such purchases unnecessary. We do not know of any instances of tribal use of mineral materials from public lands.

National Environmental Policy Act

In compliance with the National Environmental Policy Act, construction of the powerline, and the associated construction and rehabilitation of roads and trails, were analyzed in the Brownlee-Oxbox #2 Transmission Line Project Environmental Analysis. A Finding of No Significant Impact (FONSI) was issued on July 7, 2003. The Environmental Analysis states that the access roads that were to be built would be rehabilitated and would not be open to motorized public access. These supplementary rules serve as additional public notification that the powerline access roads will be closed to public vehicular use and provides BLM Law Enforcement Officers with the ability to enforce this closure. A copy of the Environmental Analysis and FONSI are available for review at the Baker Field Office (*see* **ADDRESSES**).

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Kevin McCoy, Outdoor Recreation Planner, Baker Field Office, 3165 10th Street, Baker City, OR, 97814.

Supplementary Rules for Public Lands, Oregon and Washington

Under the authority for supplemental rules found under 43 CFR 8365.1–6 and 43 U.S.C. 315a, the BLM will enforce the following rules on public lands within the affected area of the Snake River area and the Sheep Mountain WSA/ACEC at the locations identified in this order. You must follow these rules:

1. You must not operate any motorized vehicle within the affected Snake River area and Sheep Mountain WSA/ACEC areas, except on the existing improved Idaho Power Oxbow-Brownlee road on BLM public land. The Idaho Power Oxbow-Brownlee road is located on the west bank of the Snake River, from the Oxbow Dam upstream to the Brownlee Dam:

2. You must not land any motorized aircraft without authorization.

3. You must not park vehicles on public lands, except within established turnout areas no more than 100 feet from the west edge of the Idaho Power Oxbow-Brownlee road.

Exemptions: Personnel that are exempt from the area closures and restrictions include any Federal, State, local officer, or employee in the scope of their duties; members of any organized rescue or fire-fighting force in the performance of an official duty, or any person authorized or permitted in writing by the Bureau of Land Management; any person or corporation holding a valid right-of-way or easement.

Penalties: On public lands, under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571. On public lands in grazing districts (section 3) and grazing leased lands (section 15), under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 U.S.C. 315(a) any person who violates any of these supplementary rules on public lands within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than $500. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Elaine M. Brong,

State Director, Oregon State Office, Bureau of Land Management.

[FR Doc. 04–15891 Filed 7–13–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Lead-Based Paint Hazard Act

Notice is hereby given that on July 1, 2004, a proposed consent decree in *United States* v. *Dominium Management Services, Inc.,* Civil Action No. 04–CV–3088, and a proposed consent decree in *United States* v. *Zeman,* Civil Action No. 04–CV–3087, were lodged with the United States District Court for the District of Minnesota.

The consent decrees settle claims against owners of residential housing principally in Minneapolis, which were brought on behalf of the Department of Housing and Urban Development and the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 4851 *et seq.* (''Lead Hazard Reduction Act''). The United States alleged in each of its complaints that the defendants failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

Under the *Dominium* consent decree, the defendant has agreed to provide the required notice and disclosures, remove all the lead-based paint in all of its buildings that contain lead and provide lead-free certificates to HUD. In addition, Dominium has agreed to pay an administrative penalty of $10,000 to the United States and will spend an additional $70,000 on lead abatement work in the Minneapolis area.

Under the *Zeman* decree, the defendant has agreed to provide the required notice and disclosures and to

perform lead-based paint abatement of all lead-based paint discovered in the units he owns. In addition, Zeman has agreed to pay an administrative penalty of $2,000 to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Dominium Management Services, Inc.,* D.J. #90–5–1–1–08289, or *United States* v. *Zeman,* D.J. #90–5–1–1–08288.

The proposed consent decrees may be examined at the Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, attention: Tara Jordan, 490 L'Enfant Plaza, SW., Room 3206, Washington, DC 20410, (202) 755–1785, ext. 157; at the office of the United States Attorney for the District of Minnesota, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, and at U.S. EPA Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604. During the public comment period, the consent decrees may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* Copies of the consent decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 2004–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia .fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation No. (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $10.00 (25 Cents per page reproduction costs), payable to the U.S. Treasury for the consent decree in *United States* v. *Dominium Management Services, Inc.,* D.J. #90–5–1–1–08289, and $9.75 (25 cents per page reproduction costs), payable to the U.S. Treasury, for the consent decree in *United States* v. *Zeman,* D.J. #90–5–1–1–08288.

Karen Dworkin,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–15998 Filed 7–13–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Oil Pollution Act of 1990, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that, on June 28, 2004, proposed Consent Decrees in *United States* vs. *Modesto Energy Limited Partnership, Modesto Environmental Corp., Enpower Management Corp., and CMS Generation Co.*, Civil Action No. S–04–1231 LKK KJM, were lodged with the United States District Court for the Eastern District of California.

In this action, the United States brought suit pursuant to the Oil Pollution Act of 1990 (''OPA''), 33 U.S.C. 2701 *et seq.*, the Federal Water Pollution Control Act (''FWPCA''), 33 U.S.C. 1251 *et seq.* and the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*, seeking unreimbursed costs of approximately $3,430,564.74, exclusive of interest, incurred by the United States, and/or expended by the Oil Spill Liability Trust Fund, in responding to a tire fire/oil spill at the Westley ''tires-to-energy'' facility located in Westley, California. One Consent Decree provides for Modesto Energy Limited Partnership, *et al.,* to pay $482,000 in Past Response Costs related to the release of oil and hazardous substances at the Site. The other Consent Decree provides for CMS Generation Co. to pay $475,000 in Past Response Costs related to the release of oil and hazardous substances at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* vs. *Modesto Energy Limited Partnership, et al.* D.J. Ref. #90–5–1–1–07881.

The Consent Decrees may be examined at the Office of the United States Attorney, at 501 I Street, Suite 10–100 Sacramento, California 95814–2322. During the public comment period, the Consent Decrees may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.50 (25 cents per page reproduction cost) for each Consent Decree, payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–15999 Filed 7–13–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Judgment

Notice is hereby given that International Sign Association (''ISA''), successor in interest to National Electric Sign Association (''NESA''), a defendant in *United States* v. *National Electric Sign Association et al.,* Civil Action No. 51 C 2064 (N.D. I11.), has filed a motion to terminate the Final Judgment entered in that matter on April 5, 1954, as it affects NESA and its successors in interest. The Antitrust Division of the Department of Justice, in a stipulation also filed with the Court, tentatively has consented to termination of the Final Judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

On December 18, 1951, the United States filed a complaint against NESA and three individual defendants who were members of NESA. The complaint alleged that NESA excluded from membership in its Supply distributor Section any parts distributor who also engaged in the manufacture of electric signs or who resold sign parts at less than the parts manufacturers' suggested resale price. The complaint also charged that NESA attempted to coerce parts manufacturers into selling parts only to parts distributors and not directly to sign manufacturers or to parts distributors also engaged in the business of manufacturing signs.

On April 5, 1954, defendants entered a consent decree. Under the decree, defendants were restrained from discriminatory conduct in granting membership in NESA or in charging dues to NESA members. The decree also required defendants to amend NESA's bylaws so as to incorporate Sections V and VI of the Final Judgment and to furnish to each of its present and future members a copy of the Final Judgment.

Sections V and VI of the Final Judgment proscribed defendants from engaging in any exclusionary or otherwise potentially or patently anticompetitive conduct such as price fixing, market allocation, concerted refusals to deal, resale price maintenance, or evaluations of parts manufacturers, parts distributors, or sign manufacturers that are disseminated among association members. Finally, NESA was restrained under the consent decree from holding a national meeting without giving notice to all of its members or a regional meeting without giving notice to all of its members in the appropriate region. The provisions of the Final Judgment are applicable to NESA and its successors, including ISA.

The Department has filed with the Court a memorandum setting forth the reasons why the United States believes that termination of the Final Judgment would serve the public interest. Copies of defendants' motion papers, the stipulation containing the United States' tentative consent, the United States' memorandum, and all further papers filed with the Court in connection with this motion will be available for inspection at the Antitrust Documents Group, Antitrust Division, Room 213, 325 7th Street, NW., Washington, DC 20004, and at the Office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Final Judgment to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (202–307–0924).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–15872 Filed 7–13–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microcontaminant Reduction Venture

Notice is hereby given that, on June 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Microcontaminant Reduction Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the parties to the venture, KMG-Bernuth, Inc., Houston, TX, and Vulcan Materials Company, Birmingham, AL, have extended the term of the Venture from three to four years.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Microcontaminant Reduction Venture intends to file additional written notification disclosing all changes in membership.

On June 13, 2001, Microcontaminant Reduction Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 19, 2001 (66 FR 37709).

The last notification was filed with the Department on August 14, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 8, 2003 (68 FR 52958).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–15873 Filed 7–13–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Public Announcement Pursuant to the Government in the Sunshine Act (Public Law 94–409) (5 U.S.C. 552b)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m., Tuesday, July 13, 2004.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: July 8, 2004.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 04–16027 Filed 7–12–04; 9:31 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Request for Information on Efforts by Certain Countries To Eliminate the Worst Forms of Child Labor

AGENCY: The Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Request for information on efforts by certain countries to eliminate the worst forms of child labor.

SUMMARY: This notice is a request for information for use by the Department of Labor in preparation of an annual report on certain trade beneficiary countries' implementation of international commitments to eliminate the worst forms of child labor. This will be the fourth such report by the Department of Labor under the Trade and Development Act of 2000 (TDA).

DATES: Submitters of information are requested to provide two (2) copies of their written submission to the International Child Labor Program at the address below by 5 p.m., August 13, 2004.

ADDRESSES: Written submissions should be addressed to Tina Faulkner at the International Child Labor Program, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5307, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Tina Faulkner, Bureau of International Labor Affairs, International Child Labor Program, at (202) 693–4846; fax (202)

693–4830. The Department of Labor's international child labor reports can be found on the Internet at *http://www.dol.gov/ILAB/media/reports/iclp/main.htm* or can be obtained from the International Child Labor Program.

SUPPLEMENTARY INFORMATION: The Trade and Development Act of 2000 [Pub. L. 106–200], established a new eligibility criterion for receipt of trade benefits under the Generalized System of Preferences (GSP), Caribbean Basin Trade and Partnership Act (CBTPA), and Africa Growth and Opportunity Act (AGOA) programs. The TDA amends the GSP reporting requirements of the Trade Act of 1974 (Section 504) [19 U.S.C. 2464] to require that the President's annual report on the status of internationally recognized worker rights include ''findings by the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.''

Likewise, Title II of the TDA includes as a criterion for receiving benefits under the CBTPA ''whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.'' The TDA Conference Report [Joint Explanatory Statement of the Committee of Conference, 106th Cong.2d.sess. (2000)] indicates that ''the conferees intend that the GSP standard, including the provision with respect to implementation of obligations to eliminate the worst forms of child labor, apply to eligibility for those additional benefits'' [provided for in the AGOA.]

Scope of Report

Countries presently eligible under the GSP are: Afghanistan, Albania, Algeria, Angola, Anguilla, Antigua and Barbuda, Argentina, Armenia, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands, British Indian Ocean Territory, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Christmas Islands, Cocos Islands, Colombia, Comoros, Republic of Congo, Democratic Republic of the Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Falkland Islands, Fiji, Gabon, the Gambia, Georgia, Ghana, Gibraltar, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Heard Island and MacDonald Islands, Honduras, India, Indonesia, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Lebanon, Lesotho, Macedonia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Moldova, Mongolia, Montserrat, Morocco, Mozambique, Namibia, Nepal, Niger, Nigeria, Niue, Norfolk Island, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Pitcairn Island, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, Sri Lanka, Suriname, Swaziland, Tanzania, Thailand, Togo, Tokelau Island, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turks and Caicos Islands, Tuvalu, Uganda, Uruguay, Uzbekistan, Vanuatu, Venezuela, Wallis and Futuna, West Bank and Gaza Strip, Western Sahara, Republic of Yemen, Zambia, and Zimbabwe.

Countries eligible or potentially eligible for additional benefits under the AGOA include: Angola, Benin, Botswana, Cameroon, Cape Verde, Chad, Republic of Congo, Democratic Republic of the Congo, Cote d'Ivoire, Djibouti, Ethiopia, Gabon, the Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, and Zambia.

Countries potentially eligible for additional benefits under the CBTPA are: Barbados, Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, and Trinidad and Tobago.

Information Sought

The Department invites interested parties to submit written information relevant to the findings to be made by the Department of Labor under the TDA, for all listed countries. Information provided through public submission will be considered by the Department of Labor in preparing its findings. Materials submitted should be confined to the specific topic of the study. In particular, the Department's Bureau of International Labor Affairs is seeking written submissions on the following topics:

1. Whether the country has adequate laws and regulations proscribing the worst forms of child labor;

2. Whether the country has adequate laws and regulations for the implementation and enforcement of such laws and regulations;

3. Whether the country has established formal institutional mechanisms to investigate and address complaints relating to allegations of the worst forms of child labor;

4. Whether social programs exist in the country to prevent the engagement of children in the worst forms of child labor, and to assist in the removal of children engaged in the worst forms of child labor;

5. Whether the country has a comprehensive policy for the elimination of the worst forms of child labor;

6. Whether the country is making continual progress toward eliminating the worst forms of child labor.

Information relating to the nature and extent of child labor in the country is also sought.

Definition of Worst Forms of Child Labor

The term ''worst forms of child labor'' is defined in section 412(b) of the TDA as comprising:

* * * (A) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(B) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(C) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties; and

(D) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. * * *

The TDA Conference Report noted that the phrase,

* * * Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children * * *

is to be defined as in Article II of Recommendation No. 190, which accompanies ILO Convention No. 182. This includes work that exposes children to physical, psychological, or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment or tools, or work under circumstances which involve the manual handling or transport of heavy loads; work in an unhealthy environment that exposes children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and work under particularly difficult conditions such as for long hours, during the night or under

conditions where children are unreasonably confined to the premises of the employer.

The TDA Conference Report further indicated that this phrase be interpreted in a manner consistent with the intent of Article 4 of ILO Convention No. 182, which states that such work shall be determined by national laws or regulations or by the competent authority in the country involved.

This notice is a general solicitation of comments from the public.

Signed at Washington, DC this 9th day of July, 2004.

Arnold Levine,

Assistant Deputy Under Secretary for International Labor Affairs.

[FR Doc. 04–15963 Filed 7–13–04; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Office of Federal Contract Compliance Programs Complaint Form (CC–4). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 13, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of three equal opportunity programs: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended and 38 U.S.C. 4212, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended (VEVRAA). These programs require affirmative action by Federal contractors and subcontractors and prohibit discrimination on the basis of race, color, sex, religion, national origin, status as a qualified individual with disabilities or protected veteran. No private right of action exists under the three programs that are enforced by the U.S. Department of Labor (DOL), *i.e.* a private individual may not bring a lawsuit against an employer (or prospective employer) for noncompliance with its contractual obligations under the laws enforced by OFCCP. However, any employee or applicant for employment with a Government contractor may file a complaint with the Department of Labor alleging discrimination by completing Complaint Form CC–4, Complaint of Discrimination in Employment under Federal Government Contracts. DOL investigates the complaint but retains the discretion whether to pursue prosecution. If a complaint filed under Executive Order 11246, as amended, involves discrimination against only one person, the OFCCP will normally refer it to the U.S. Equal Employment Opportunity Commission (EEOC). Such referrals are made under a Memorandum of Understanding between the two Federal agencies. Complaints that involve groups of people or indicate patterns of discrimination are generally investigated by the OFCCP. The program also investigates individual or group complaints filed under the disability and veterans laws. Under Executive Order 11246, as amended, the authority for collection of complaint information is Section 206(b). The implementing regulations which specify the content of this information collection are found at 41 CFR 60–1.23(a). Under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, the authority for collecting complaints information is at 38 U.S.C. 4212(d). The implementing regulations which specify the content of this information collection are found at 41 CFR 60–250.61(b). Section 503 of the Rehabilitation Act of 1973, as amended, is the authority for collecting complaint information under the statute. The implementing regulations which specify the content of this information collection are found at 41 CFR 60–741.61(c). For purposes of this clearance request, the programs have been divided functionally into two categories, construction and supply service. This information collection request covers the recordkeeping and reporting requirements for the complaint form CC–4. A separate information collection request covers the recordkeeping and reporting requirements for supply and service industries, and is approved under OMB 1215–0072. This information collection is currently approved for use through November 30, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information in order to carry out its responsibility to enforce the affirmative action and anti-discrimination provisions of the three Acts, which it administers.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Office of Federal Contract Compliance Programs Complaint Form.

OMB Number: 1215–0131.

Agency Number: CC–4.

Affected Public: Individuals or households.

Total Respondents: 848.
Total Annual Responses: 848.
Average Time per Response: 1.28 hours.
Estimated Total Burden Hours: 1,085
Frequency: On occasion.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $339.20.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 8, 2004.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–15962 Filed 7–13–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0176 2004]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (1218–0176)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. The Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for the current paperwork requirements of 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses. A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted on or before September 13, 2004.

Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 1218–0176 2004 U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2350. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Jacqueline Gilmore, Office of Statistical Analysis, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–1889. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Jacqueline Gilmore at (202) 693–1889 or Todd Owen at (202) 693–3222. For electronic copies, contact OSHA's Web page on the Internet at *http://www.osha.gov/*.

SUPPLEMENTARY INFORMATION:

I. *Background:* The OSHA Act and 29 CFR part 1904 prescribe that certain employers maintain records of job related injuries and illnesses. The injury and illness records are intended to have multiple purposes. One purpose is to provide data needed by OSHA to carry out enforcement and intervention activities to provide workers a safe and healthy work environment. The data are also needed by the Bureau of Labor Statistics to report on the number and rate of occupational injuries and illnesses in the country.

The data also provides information to employers and employees of the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. Likewise, employees who are provided information on injuries and illnesses will be more likely to follow safe work practices and report workplace hazards. This would generally raise the overall level of safety and health in the workplace.

OSHA currently has approval from the Office of Management and Budget (OMB) for information collection requirements contained in 29 CFR 1904. That approval will expire on October 31, 2004, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval. This notice also solicits public comment on OSHA's existing paperwork burden estimates from those interested parties and to seek public response to several questions related to the development of OSHA's estimation. Interested parties are requested to review OSHA's estimates, which are based upon the most current data available, and to comment on their accuracy or appropriateness in today's workplace situation.

II. *Current Actions:* This notice requests public comment on an extension of the current OMB approval of the paperwork requirements in 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses.

Type of Review: Extension of currently approved collection.
Agency: U.S. Department of Labor, Occupational Safety and Health Administration.
Title: Recording and Reporting Occupational Injuries and Illnesses.
OMB Number: 1218–0176.
Agency Number: ICR–1218–0176 2004.
Frequency: Recordkeeping.
Affected Public: Business or other for-profit; farms; not-for-profit institutions; State and local government.
Cite/Reference/Form/etc: 29 CFR part 1904; OSHA Form 300; OSHA Form 300A, OSHA Form 301.
Number of Respondents: 1,484,000.
Estimated Time Per Respondent: 2.0 hours.
Total Burden Hours: 2,991,796 hours.

Comments submitted in response to this notice will be summarized and/or

included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: July 7, 2004.

John L. Henshaw,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 04–15921 Filed 7–13–04; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before August 13, 2004 to be assured of consideration.

ADDRESSES: Comments should be electronically mailed to: OMB Desk Officer for NARA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 21, 2004 (69 FR 21584 and 21585). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Volunteer Service Application Form.

OMB number: 3095–NEW.

Agency form number: NA Form 6045.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 2,300.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 575 hours.

Abstract: NARA uses volunteer resources to enhance its services to the public and to further its mission of providing ready access to essential evidence. Volunteers assist in outreach and public programs and provide technical and research support for administrative, archival, library, and curatorial staff. NARA needs a standard way to recruit volunteers and assess the qualifications of potential volunteers. The NA Form 6045, Volunteer Service Application Form, will be used by members of the public to signal their interest in being a NARA volunteer and to identify their qualifications for this work.

Dated: July 9, 2004.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 04–15996 Filed 7–13–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON THE HUMANITIES

Notice of Meeting

July 8, 2004.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on July 29–30, 2004.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on July 29–30, 2004, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on July 29, 2004, will be as follows:

Committee Meetings

(Open to the Public): Policy Discussion.

9–10:30 a.m.
Challenge Grants—Room 415
Education Programs—Room 315
Federal/State Partnership—Room 507
Public Programs—Room 420

(Closed to the Public): Discussion of specific grant applications and programs before the Council.

10:30 a.m. until adjourned
Challenge Grants—Room 415
Education Programs—Room 315
Federal/State Partnership—Room 507
Public Programs—Room 420

2:30–3:30 p.m.—National Humanities Medals—Room 527

The morning session on July 30, 2004, will convene at 9 a.m., in the 1st Floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting
B. Reports
1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Reports on Policy and General Matters
a. Challenge Grants
b. Education Programs
c. Federal/State Partnership
d. Public Programs
e. National Humanities Medals

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Mr. Daniel C. Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Daniel C. Schnieder,

Advisory Committee Management Officer.

[FR Doc. 04–15938 Filed 7–13–04; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL INDIAN GAMING COMMISSION

Notice of Intent To Prepare an Environmental Impact Statement and of a Scoping Meeting for the Lytton Rancheria San Pablo Casino Project, San Pablo, CA

AGENCY: National Indian Gaming Commission.

ACTION: Notice of intent.

SUMMARY: The notice advises the public that the National Indian Gaming Commission (NIGC), in cooperation with the Lytton Rancheria of California (''Lytton Rancheria''), intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for a proposed casino project to be located in Contra Costa County, California. The purpose of the proposed action is to help address the socio-economic needs of the Lytton Rancheria. Details of the proposed action and location are provided below in the Supplemental Information section. The scoping process will include notifying the general public and federal, state, local, and tribal agencies of the proposed action. This notice also announces a public scoping meeting that will be held for the proposed action. The purpose of scoping is to identify public and agency concerns, and alternatives to be considered in the EIS.

DATES: Written comments on the scope of the EIS should arrive by August 16, 2004. The public hearing will be held on July 30, 2004, from 7 p.m. to 9 p.m., or until the last public comment is received.

ADDRESSES: Written comments on the scope of the EIS should be addressed to: Christine Nagle, NEPA Coordinator, National Indian Gaming Commission, 1441 L Street NW., 9th Floor, Washington, DC 20005, telephone (202) 632–7003. Please include your name, return address, and the caption: ''DEIS Scoping Comments, Lytton Rancheria Casino Project'', on the first page of your written comments.

The public hearing will be co-hosted by the NIGC and the Lytton Rancheria. The meeting location is Maple Hall, 13831 San Pablo Avenue, Building #4, San Pablo, CA 94806.

FOR FURTHER INFORMATION CONTACT: For general information on NEPA review procedures or status of the NEPA review, contact Christine Nagle, NIGC NEPA Coordinator, 202–632–7003.

SUPPLEMENTARY INFORMATION: The proposed federal action is the approval of a gaming management contract between the Lytton Rancheria and California Indian Gaming Management, LLC (''CIGM''). The approval of the gaming management contract would result in the development of a casino and supporting facilities. The facility will be managed by CIGM on behalf of the Lytton Rancheria, pursuant to the terms of a gaming management contract. The proposed development would take place on an approximately 9.5 acre site (the project site) that is held in trust by the United States for the benefit of the Lytton Rancheria. The project site is located in the City of San Pablo in Contra Costa County, and within one mile of Interstate 80. Surrounding land uses are urban, and include a hospital, offices, restaurants, and retail. In addition to the proposed action, a reasonable range of alternatives, including a no action alternative will be analyzed in the EIS.

The Lytton Rancheria consists of approximately 259 members. It is governed by a tribal council, consisting of seven members, under a constitution that was passed by vote of the members on August 30, 1996.

The NIGC will serve as lead agency for compliance with the National Environmental Policy Act (NEPA).

Public Comment Solicitation: Written comments pertaining to the proposed action will be accepted throughout the EIS planning process. However, to ensure proper consideration in preparation of the draft EIS, scoping comments should be received by August 16, 2004. The draft EIS is planned for publication and distribution towards the end of 2004.

Individual commenters may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. Anonymous comments will not, however, be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority: This notice is published pursuant to Sec. 1503.1 of the Council of Environmental Quality Regulations (40 CFR, Part 1500 through 1508 implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371 *et seq.*)), and the NIGC NEPA Procedures Manual.

Dated: July 8, 2004.

Philip N. Hogen,

Chairman.

[FR Doc. 04–15961 Filed 7–13–04; 8:45 am]

BILLING CODE 7565–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 69 FR 19240, with a correction notice for the title of the program at 69 FR 25145, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW,

Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (703) 292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title: The Evaluation of NDF's Math and Science Partnerships (MSP) Program.

OMB Control Number: 3145–NEW.

1. Abstract

This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Math and Science Partnership (MSP) Program. The goals for the program are to (1) ensure that all K–12 students have access to, are prepared for, and are encouraged to participate and succeed in challenging curricula and advanced mathematics and science courses; (2) enhance the quality, quantity, and diversity of the K–12 mathematics and science teacher workforce; and (3) develop evidence-based outcomes that contribute to our understanding of how students effectively learn mathematics and science. The motivational force for realizing these goals is the formation of partnerships between institutions of higher education (IHEs) and K–12 school districts. The role of IHE content faculty is the cornerstone of this intervention. In fact, it is the rigorous involvement of science, mathematics, and engineering faculty—and the expectation that both IHEs and K–12 school systems will be transformed—that distinguishes MSP from other education reform efforts.

The components of the overall MSP portfolio include active projects whose initial awards were made in prior MSP competitions, as well as those to be awarded in the current MSP competition: (1) Comprehensive Partnerships that implement change in mathematics and/or science educational practices in both higher education institutions and in schools and school districts, resulting in improved student achievement across the K–12 continuum; (2) Targeted Partnerships that focus on improved K–12 student achievement in a narrower grade range or disciplinary focus within mathematics or science; (3) Institute Partnerships: Teacher Institutes for the 21st Century that focus on the development of mathematics and science teachers as school- and district-based intellectual leaders and master teachers; and (4) Research, Evaluation and Technical Assistance (RETA) projects that build and enhance largescale research and evaluation capacity for all MSP awardees and provide them with tools and assistance in the implementation and evaluation of their work.

The MSP online monitoring system, comprised of four web-based surveys, will collect a common core of data about each component of MSP. The web application for MSP will be developed with a modular design that incorporates templates and self-contained code modules for rapid development and ease of modification. A downloadable version will also be available for respondents who prefer a paper version that they can mail or fax to Westat. Information from the system will be used to document the Partnerships' annual progress toward meeting the Key features of MSP projects, such as developing partnerships between IHEs and local school districts, increasing teacher quality, quantity, and diversity, providing challenging courses and curricula, utilizing evidence-based design and outcome measures, and implementing institutional change and sustainability.

2. Expected Respondents

The expected respondents are principal investigators of all projects; STEM and education faculty members and administrators who participated in MSP; school districts and IHEs that are partners in an MSP project.

3. Burden on the Public

During the first year of data collection, Cohort 1 projects will be asked to report baseline data (*i.e.,* for 2001–02) as well as two years of activity data (2002–2004). Cohort 2 will be asked to report for its baseline (2002–03) and one year of activity data (2003–04). The total elements for this first year collection are 45,344 burden hours for a maximum of 2,552 participants, assuming a 100% response rate. The average annual reporting burden is approximately 17.75 hours per respondent. The burden on the public is negligible because the study is limited to project participants that have received funding from the MSP Program.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–15883 Filed 7–13–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board Committee on Strategy and Budget; Sunshine Act Meeting

DATE AND TIME: July 16, 2004 11:30 a.m.–12:30 p.m. Closed Session.

PLACE: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Friday, July 16, 2004.

Closed Session (11:30 a.m. to 12:30 p.m.)

The National Science Board Committee on Strategy and Budget will discuss the NSF FY 2006 budget request.

FOR FURTHER INFORMATION CONTACT: John Wilkinson, Executive Secretary, CSB, (703) 292–7000, *http://www.nsf.gov/nsb.*

John Wilkinson,

Executive Secretary, Committee on Strategy and Budget.

[FR Doc. 04–16018 Filed 7–9–04; 4:21 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. PAPO–00; ASLBP No. 04–829–01–PAPO]

Department of Energy; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and the Commission's regulations, *see* 10 CFR 2.300, 2.303, 2.318, 2.321, 2.1000, and 2.1010, and the Commission's July 7, 2004, order (CLI–04–20, 60 NRC __ (July 7, 2004)), notice is given that an Atomic Safety and Licensing Board is hereby established to preside over the following proceeding: U.S. Department of Energy, High-Level Waste Repository: Pre-Application Matters.

As specified in the Commission's July 7, 2004 order (CLI–04–20, 60 NRC at __

(slip op. at 2–4), this proceeding concerns matters relating to the Licensing Support Network (LSN) arising during the pre-license application phase prior to the filing of a license application by the United States Department of Energy seeking authorization to construct a high-level radioactive waste repository at Yucca Mountain, Nevada.*

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Alex S. Karlin, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Alan S. Rosenthal, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.1010(d).

Issued in Rockville, Maryland, this 8th day of July 2004.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 04–15920 Filed 7–13–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03004532]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for U.S. Department of the Army's Facility in Fort Detrick, Frederick County, MD

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: John D. Kinneman, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5252, fax (610) 337–5269; or by e-mail: *jdk@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to the U.S. Department of the Army (Army) for Materials License No. 19–01151–02, to terminate the license and authorize release of its facilities at the U.S. Army Garrison in Fort Detrick, Frederick County, Maryland for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The Army's request for the proposed action was previously noticed in the **Federal Register** on April 30, 2003 (68 FR 23163), along with a notice of an opportunity to request a hearing. The amendment will be issued following the publication of this notice.

II. EA Summary

The purpose of the proposed action is to terminate Byproduct Materials License No. 19–01151–02 and release the licensee's Fort Detrick facility for unrestricted use. The Army was authorized by NRC since 1954 to use radioactive materials for research and development purposes and for collection, storage, and disposal of radioactive wastes from tenant facilities at the site. On March 26, 2004, the Army provided the results of the final task in the decommissioning of the facility and requested that NRC release the Fort Detrick facility for unrestricted use. The Army has conducted surveys of the Fort Detrick facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20. The NRC staff has prepared an EA in support of the proposed license amendment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated the Army's request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). The staff has also found that the non-radiological impacts are not significant. On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML023380577, ML023500461, ML030840097, ML030900332, ML041630081, ML031350586, ML032260400, ML032660361, ML041630070, ML032830344, ML041030414 and ML041880474. The PDR reproduction contractor will copy documents for a fee. These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, of by e-mail to *pdr@nrc.gov*.

Dated in King of Prussia, Pennsylvania this 7th day of June 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–15918 Filed 7–13–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 152nd meeting on July 20–22, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance except for portions that will be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACNW; information the release of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed

* Unless and until additional licensing boards or other presiding officers are appointed to rule on individual pre-license application phase issues, or classes of issues, relating to the LSN, all requests for Pre-License Application Presiding Officer consideration of LSN-related problems should be submitted to the Licensing Board constituted by this issuance.

agency action pursuant to 5 U.S.C. 552b(c)(2), (6) and (9)(B).

The schedule for this meeting is as follows:

Tuesday, July 20, 2004

10 a.m.–10:10 a.m.: Opening Statement (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

10:10 a.m.–11:30 a.m.: Package Performance Study (PPS) (Open)—The Committee will hear a report from representatives of the NRC staff on the proposed package performance study which will demonstrate the resistance to impact and fire of a spent nuclear fuel rail shipping cask.

11:45 a.m.–12:45 p.m.: License Termination Rule (LTR) Analysis of the Use of Intentional Mixing of Contaminated Soil (Open)—The Committee will hear presentations by and hold discussions with a representative of the NRC staff regarding SECY–04–0035—the LTR analysis of the use of intentional mixing of contaminated soil.

1:45 p.m.–2:45 p.m.: Risk-Informing Yucca Mountain Inspection Systems (Open)—The Committee will hear presentations by and hold discussions with a representative of the NRC staff regarding the status of plans to risk-inform the inspection system at Yucca Mountain.

2:45 p.m.–3:15 p.m.: Japan Trip (Open)—The Committee will be briefed by a Japanese exchange engineer on its August 2004 visit to Japanese waste management facilities. Member presentations during the visit will be discussed.

3:15 p.m.–5 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss proposed ACNW reports on matters considered during this and prior meetings regarding reports on Geosphere Transport Working Group, Treatment of Uncertainties in Hydrologic Models, License Termination Rule Analysis of Use of Intentional Mixing of Contaminated Soil, Risk-Informing Yucca Mountain Inspection System and Package Performance Study.

5:15 p.m.–6:30 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners at 10 a.m. in the Commissioners' Conference Room, One White Flint North on July 21, 2004. The Committee will review its presentations.

Wednesday, July 21, 2004

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:15 a.m.: Preparation for Meeting with the NRC Commissioners (Continued) (Open)—The Committee will discuss the following topics scheduled for the Committee meeting with the NRC Commissioners:

(1) Overview
(2) Risk Insights Activities
(3) ACNW Working Group Sessions
—Biosphere (MTR)
—Geosphere (GMH)
(4) Other Committee Activities
—NRC/CNWRA Research
—NMSS Decommissioning Programs
(5) Closing Comments

9:30 a.m.–11:30 a.m.: Meeting with the NRC Commissioners, Commissioners' Conference Room, One White Flint North (Open)—The Committee will meet with the NRC Commissioners to discuss items noted above.

1 p.m.–2:15 p.m.: Integrated Safety Assessment (ISA) Background Briefing (Open)—The Committee will receive a background briefing by a member of its staff on the general ISA approach, examples of its use and lessons learned thus far.

2:15 p.m.–3:15 p.m.: Health Physics (HP) Issues (Open)—The Committee will hear presentations by and hold discussions with a representative of the NRC staff regarding activities for the ICRP recommendations review, and an overview of those recommendations.

3:30 p.m.–4 p.m.: Site Visit and Igneous Activity Working Group (Open)—The Committee will finalize its proposed activities for the September Nevada field trip and the agenda for the Working Group in Las Vegas, NV during the 153rd ACNW Meeting, September 22–24, 2004.

4 p.m.–4:30 p.m.: Committee Retreat (Open/Closed)—The Committee will discuss its plans on technical topics it intends to examine over the next 12 to 18 months and ACNW activities and related matters as it integrates recently approved activities into its action plan. The retreat is currently scheduled for September 24, 2004.

[Note: This session may be closed pursuant to 5 U.S.C. 552b (c) (2), (6) and (9) (B) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACNW; information the release of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.]

4:45 p.m.–6:30 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss proposed ACNW reports on matters considered during this meeting.

Thursday, July 22, 2004

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–11:45 a.m.: Preparation of ACNW Reports (Open)—The Committee will continue its discussion of the proposed ACNW letter reports.

11:45 a.m.–12 Noon: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 16, 2003 (68 FR 59643). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, Assistant Director for ACNW/Team Leader (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. e.t., as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

In accordance with subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACNW; information the release of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed

agency action pursuant to 5 U.S.C. 552b(c)(2), (6) and (9)(B).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system(ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: July 8, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–15919 Filed 7–13–04; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The Postal Service proposes a new Privacy Act system of records. The system of records will apply to a name and address directory that the Postal Service plans to license from a commercial source, in order to improve the proper barcoding and delivery of mail.

DATES: Any interested party may submit written comments on the proposed system of records. This proposal will become effective without further notice on August 23, 2004, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Please address your comments to the Privacy Office, United States Postal Service, 475 L' Enfant Plaza, SW, Room 10433, Washington, DC 20260–2200. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Privacy Office, United States Postal Service, Room 10433, Washington, DC 20260–2200. Phone: 202–268–5959.

SUPPLEMENTARY INFORMATION:

Introduction

This document publishes notice of a new system of records for the Postal Service, USPS 500.100, Address Matching for Mail Processing. The new system of records supports a Postal Service program, called the Distribution Quality Improvement (DQI) Program, which will use a commercially available name and address directory to improve mail processing. The purpose of the DQI program is to increase the ability of the Postal Service to barcode mail properly in order to ensure delivery to the intended address. The Postal Service plans to pilot test the program in New York State from September 2004 to Spring 2005, then, if successful, deploy the program nationally in or after May 2005.

Described below are: (I) The need for and benefits of the DQI program; (II) how the pilot test and national deployment will be conducted; and (III) the extensive privacy and security controls that have been put in place, including how the directory will and will not be used. The Postal Service does not anticipate adverse effects on the privacy rights of customers resulting from operation of the DQI program.

I. Rationale for the DQI Program

Background—Privacy and Technology

Mail has always been one of the most valuable, effective, and trusted means of communication. For more than two centuries, the mission of the Postal Service has been the prompt, reliable, and efficient delivery of personal and business mail to all communities in the nation. As the delivery network has developed and expanded, the Postal Service has continuously adapted every major innovation in technology, transportation, and communication to provide enhanced service to its customers. From the early transportation improvements provided by railway Post Offices, to today's technology applications such as USPS.com, the Postal Service has a long history of pursuing continual improvements to the speed, accuracy, and certainty of mail delivery.

Today, the Postal Service delivers more than 200 billion pieces of mail each year to more than 140 million addresses, serving every household and business in the country. Every year, approximately 1.9 million addresses—equivalent in size to the city of Chicago—are added to the delivery network. In order to accomplish its mission of universal service, the Postal Service operates some of the most complex systems and equipment ever developed. The Postal Service delivers more mail to more locations, and at a lower price, than any other post or delivery network in the world.

The privacy and security of mail are also at the core of the Postal Service brand. Over the course of its history, the Postal Service has built a trusted brand with the public. New technology and processes continue to be developed that bring added value and customer service to the network. As always, the Postal Service will only use technology, or adapt that technology, in a way that ensures that the privacy and security of the mail and its customers are maintained at the highest levels. The current proposal is no exception. The Postal Service has carefully analyzed the need, usage, and benefits of the DQI program, while establishing procedures that would properly address privacy and security needs.

Mail Processing—USPS Databases, Barcodes, and Finest Depth-of-Sort (FDOS)

In order to ensure that the billions of mailpieces it processes are delivered accurately, promptly, and cost effectively, the Postal Service has developed a sophisticated network and state-of-the-art systems to process mail. This section describes the information the Postal Service uses, including databases, ZIP Codes™ , and barcodes. The next section describes mail processing systems, including automation equipment.

To facilitate accurate delivery, the Postal Service maintains a database of addresses known as the USPS Address Management System (AMS). AMS contains valid addresses that receive postal delivery. For each address, the AMS database includes the following elements: carrier number; ZIP Code; city and state; street name; primary address (such as house number); and secondary address information (such as apartment or suite number), if applicable. Names of large firms are included. Names of individuals are not included, except for

the names of certain customers on rural routes to assist the letter carrier with delivery. AMS was developed in the early 1980s by Postal Service personnel based on the creation and assignment of ZIP+4® codes. Postal Service personnel continue to update AMS today, based on new delivery information.

As first developed and as used today, AMS supports mail processing by enabling the Postal Service to barcode mail that does not have a barcode printed on it by the mailer. The mail can then be processed on automated sorting equipment rather than by manual or mechanized operations. Automation improves the efficiency, accuracy, and timeliness of mail processing and delivery.

The process works as follows: To ensure that mail contains a valid address for delivery, the automation equipment first reads the address on the piece and matches it to the AMS database. The equipment then generates and prints a barcode on the mailpiece which contains the ZIP Code associated with that address. The ZIP Code printed may be 5, 9, or 11 digits, as described below, depending on the level of match to AMS. The goal is to print the most complete ZIP Code, a code known as the finest depth of sort (FDOS). The FDOS ZIP Code is a code that represents the most specific delivery point available for a particular address. Examples are a single house or an apartment/suite in a building. When coded to FDOS, mail can be sorted without any manual intervention directly into the sequence in which a letter carrier delivers mail (known as a walk sequence).

The Postal Service assigns ZIP Codes as follows. The familiar 5-digit ZIP Code describes a geographical area, such as a small town or section of a larger town. The ZIP+4 code, a 9-digit ZIP Code, describes a much more specific location, often a particular block on a street of single family houses, or a particular apartment building in a more densely populated area. The Postal Service also uses an 11-digit code, which adds two more digits of specificity. FDOS is generally 11 digits, but can be 9 digits (in the case of reply mail for certain businesses) or very rarely 5 digits, where a very large mail recipient has its own unique ZIP Code. Buildings that contain multiple deliveries are typically assigned a 9 digit code. If the mailpiece being processed contains sufficient information, such as an apartment number, the Postal Service is able to match the piece against AMS and print an 11 digit FDOS ZIP Code to the specific address. If the mailpiece has missing or incorrect elements, the 11 digit barcode printed on the piece will simply include a default value for the building, so it is not coded to FDOS.

Without a match to AMS that allows an FDOS ZIP Code, the Postal Service cannot be certain of the exact address for delivery. Minor discrepancies, such as a single missing, mistaken, or illegible character, can modify the address enough to prevent FDOS matching. As described below, the Postal Service then has to take significant additional steps to handle the mailpiece, and there is a greater likelihood the mail will be delayed or not delivered to the intended address.

Mail Processing—Automation Equipment, Address Recognition Systems, and Manual Processing

Described below is an overview of the systems used to process letters. Particular focus is given to address recognition systems, where the DQI program will be implemented.

Each year, the Postal Service processes more than 147 billion letters. These mailpieces enter the postal system in one of two ways. Approximately 102 billion pieces come in through acceptance units from business mailers, and are typically presorted and/or barcoded. This mail is sorted on automation equipment known as barcode sorters, and does not require processing on address recognition systems. The remainder, approximately 45 billion pieces, enters through collection systems such as collection boxes and local Post Offices™. Some of this mail is barcoded to 5, 9, or 11 digits; some of it is not barcoded at all. This mail is processed on address recognition systems, as follows:

1. When collection letter mail is processed, automation equipment sends an image of the mailpiece to a recognition system known as a remote computer reader (RCR). RCR is a completely computer-based system that requires no human intervention to perform address matching. Pieces already barcoded are sent to the barcode sorters. For nonbarcoded pieces, the RCR system attempts to match the address in the image to an address in the AMS database. If it completes a match to a sufficient level of confidence, a barcode is printed on the mailpiece, and the piece is routed using the barcode. If RCR cannot match the address, the image is sent offsite to a recognition system known as a Remote Encoding Center (REC).

2. At REC sites, employees review the image and key in information from the mailpiece in an attempt to match the address to AMS. If the address is matched, a barcode is printed on the mailpiece, and the piece is processed using the barcode. If there is no match, the piece must be sorted manually.

3. Manual processing is conducted at several places and levels, including originating and destinating Postal Service facilities, as the Postal Service tries to route the mailpiece for delivery to the intended address. Employees performing manual processing use various sources to recognize the address on the mailpiece. These sources can include internal information, such as derivations of AMS, as well as external information including phone books and maps. From these sources, the mailpiece is sorted to the best estimate of the correct letter carrier route. The letter carrier will then attempt further sorting and delivery. If the address cannot be recognized as one of the carrier's delivery addresses, it will go through further processing to find the right address. If all efforts are unsuccessful, the mailpiece is determined to be undeliverable as addressed. Undeliverable mail is reviewed for final processing, either to be forwarded, returned to the sender, or discarded, depending on the class of mail and level of service requested by the mailer.

4. Once barcoded, mail is sorted through automation into the walk sequence used by letter carriers to complete their routes. If processed manually, the letter carrier sorts the mail into the walk sequence at the local delivery facility. Through either process, when carriers identify errors based on their personal knowledge, they attempt to reroute the mailpiece to the correct address.

Each additional step in address recognition increases the time, resources, and costs required for delivery, and the possibility that the mail will not be delivered correctly.

The Problem: Remaining Barriers To Further Recognition Improvements

Since the Postal Service introduced address recognition systems in the 1980s, their performance has continuously improved. For example, the ability of RCRs to read and match addresses has improved dramatically. From 1996 to 2004, RCR performance has improved from 35% to 90%. This has reduced the need for REC image processing from a peak of 24 billion to around 6 billion images per year. The error rate, where mail is coded improperly, has also been reduced.

To date, the Postal Service has focused on improvements that could be accomplished by technology, such as improvements in reading characters in the address. The Postal Service has been very successful in these efforts, but is now nearing the limits of technological

improvements. Some addresses can never be matched by existing systems, even if the address is read perfectly, because there are problems with address elements on the mailpiece. Address elements commonly include street names, street directionals (*e.g.*, N, S, E, or W), house numbers, or secondary numbers (such as an apartment or suite number). Problem addressing can include addresses with missing, incomplete, or incorrect address elements, or address elements that are illegible. Other problems include address inserts that are misaligned with the envelope's window, so that parts of the address elements are hidden. Even a single missing or incorrect address element can prevent the Postal Service from recognizing the correct address, with potential resulting delays, misdeliveries, or nondeliveries. Some of these problems with address elements cannot be corrected by technology alone. Without the use of additional information, such as the name in the address block on the mailpiece, the Postal Service is unable to confirm the correct address for delivery.

II. The Pilot Test and National Deployment

The goal of the Postal Service in implementing the Distribution Quality Improvement (DQI) program is to improve its ability to barcode mail that is not already barcoded by the mailer, and deliver it to the correct address. The Postal Service plans to pilot test the program in New York. The purpose of the test is to evaluate the level of improvement achieved through the DQI program. If the test is successful, the program will be deployed nationally. Described below are how the pilot test will be conducted (including pilot sites), estimated benefits, and national deployment.

How the Pilot Test Will Be Conducted

To conduct the pilot test, the Postal Service will license a name and address directory from a commercial vendor. The directory will be a commercial directory that is currently available in the marketplace. The vendor will serve as a subcontractor to an existing Postal Service contractor tasked in part to help improve recognition rates. Neither the Postal Service nor its contractor will own the commercial directory.

The commercial directory will be maintained in a secure location, at a contractor site during the pilot test, and at a Postal Service site during any national deployment. At this maintenance site, before the directory is deployed to the field, every address in the directory will be compared with the AMS database. Using AMS to screen the directory before activation ensures that only valid addresses will be used and that the directory will be compatible with postal operations and mail processing. In order to assure accuracy, this process will be repeated on a weekly basis to conform to the most recent AMS database. The removal of invalid addresses will be the only result of this procedure—no additions or any other modification will be made to the directory used in the DQI program. Also, no data in the AMS database or other Postal Service databases will be modified in any way through use of the commercial directory.

After this screening, the commercial directory will be installed on RCR systems in field processing centers. Once installed, software on the RCR system will perform the following steps:

1. RCR first compares the address from the mailpiece with the AMS database, looking for a match to FDOS coding. If there is an FDOS match to a sufficient level of confidence, the mail will be processed without use of the commercial directory.

2. If unable to perform such a match, RCR will use the commercial directory to try to find the right address. RCR will use the results of the insufficient AMS match to retrieve a set of potential name(s) and delivery points from the commercial name and address databases. RCR then compares the names with the name on the mailpiece, seeking a match.

3. If the name and address on the mailpiece match a name and FDOS address from the commercial directory to a sufficient level of confidence, then the address verification process is complete. Thereafter, the process is the same as without the directory. An FDOS barcode is generated and applied using the identical processes for mail coded by RCR.

4. If a match is not found with the commercial directory, the result from the initial AMS match will be used, and the mailpiece will be processed using existing systems without DQI.

The following is a hypothetical example of how the DQI program will work: Mr. John Doe lives at 123 Main Street S. There is also a 123 Main Street N in that city. The Postal Service receives a nonbarcoded mailpiece addressed to Mr. John Doe, 123 Main Street. When the piece is processed against AMS, the Postal Service cannot tell whether the right address is 123 Main Street North or South. Under current processes, the Postal Service will attempt to discover the right address through other internal or external tools, or through personal knowledge of letter carriers, and there is a risk the piece may be routed or delivered incorrectly. With the DQI program, when the AMS match fails to produce an FDOS result, the Postal Service can confirm a Mr. John Doe lives at 123 Main Street S, and can barcode and deliver the piece to that address.

The sole purpose of the use of names in the DQI program is to confirm delivery to the correct address. The DQI program and directory will not be used for any purpose other than improving the barcoding of mail that is not being recognized to an FDOS ZIP Code by existing systems. DQI will not modify any written or printed address information on the mailpiece. No changes will be made to the AMS database or any other Postal Service database as a result of this process, nor will any information be provided back to the commercial vendor or directory, including which addresses have been removed.

Pilot Test—Scope of DQI Program and Test Sites

The pilot test of the DQI program will apply to mail that is processed by postal stations serving New York State. The commercial directory will contain only the names and addresses of individuals and firms residing in New York. The directory will be installed on an RCR system in a processing plant in Manhattan. Mail originating from the processing plant and destinating in the State of New York will be subject to DQI processing. During the pilot test, the only mail eligible for the DQI program will be mailpieces with machine-printed addresses.

New York was chosen because of the size and complexity of the New York City area. The New York City area is not only one of the largest in the United States, but also one of the most densely populated, with a population of more than 7.4 million people and a total area over 300 square miles. It typifies areas that experience a higher rate of mailpieces with unrecognized addresses. Greater rates of unrecognized addresses are found in urban areas with densely populated high-rise apartments, concentrations of small business firms, street names with numeric or single characters, and street names with directionals (*e.g.*, N, S, E, or W).

Projected Benefits of the DQI Program

The goal of the Postal Service is to deliver mail accurately and securely to a specific address. For mail that is not barcoded, the Postal Service attempts to recognize and barcode the mail so it gets to the right address as efficiently as

possible. The DQI program is expected to improve the rate and accuracy of barcoding of this mail, where there are problems with the address. This will enhance the certainty, timeliness, and accuracy of mail delivery. More mail will be recognized and barcoded to a specific intended address, which increases the certainty and speed of delivery. The volume of mail that is coded incorrectly should also be reduced. This mail may otherwise have been misdelivered unless the letter carrier corrects the error from personal knowledge.

In 2003, the Postal Service processed more than 45 billion letters through its address recognition systems. With the DQI program, the Postal Service expects to properly code at least a billion more mailpieces than it can under current processes, as well as reduce the rate of miscoding.

Proper barcoding increases the certainty that mail will be delivered to the correct and intended address. This decreases the likelihood of misdelivered mail, which protects the privacy of Postal Service customers. By developing and implementing substantial safeguards, the Postal Service seeks to improve mail delivery and privacy for its customers, while minimizing privacy risks or vulnerabilities.

National Deployment

The pilot test is planned to start in September 2004 and conclude in the Spring of 2005. The Postal Service will thoroughly analyze results from the pilot test for operational accuracy and performance improvements. The test will be considered successful if it raises the encoding rate while reducing the error rate. If the expected improvements are achieved, the Postal Service plans to deploy the DQI program in other regions or nationally in or after May 2005.

If the pilot is successful, national deployment will occur in several stages. First, the program will become national in scope. The directory licensed will include names and addresses of firms and individuals throughout the country, and will be deployed to RCRs nationally. Second, DQI will be expanded from letters to other types of mail, including flats and parcels, so the directory will be installed on recognition equipment for those mail types. Third, the directory may be used on more levels of recognition equipment, not just the initial readers. An example is deployment at the Remote Encoding Centers. As deployment proceeds, the Postal Service will carefully evaluate the success of each stage, and will monitor privacy and system safeguards.

III. Privacy Act System of Records—Safeguards for the DQI Program

The Postal Service has established a comprehensive system of safeguards to protect the privacy and security of the DQI Program and commercial directory. The following describes key aspects of the Privacy Act system, including controls and limitations over the directory, security controls and safeguards, and limitations on external disclosures. The notice of the system of records covers both the pilot test and any national deployment.

Controls and Limitations for the Commercial Directory

The commercial directory will be used only for the purposes described in this notice and not for any other purpose. The directory will only be used to properly recognize and code mail if it cannot be successfully recognized to FDOS by existing systems.

The Postal Service has limited the type of information that will be licensed from the commercial source to the minimum necessary to achieve its operational goals. The only information contained in the commercial directory are the names and addresses of individuals and businesses.

The Postal Service has established strict controls to limit how data will be compared or shared between the commercial directory and Postal Service systems. There will be limited interfaces between the directory and Postal Service databases. At the maintenance site, the directory will be matched against the AMS database to remove invalid addresses before deployment. During mail processing, mailpieces will be matched against the directory if the match to AMS is less than to FDOS. No data will be exchanged as a result of these comparisons. The directory will not be used for updating AMS or any other Postal Service database. Likewise, no name or address information from any Postal Service database, including information about items removed from the directory, will be provided back to the commercial directory or vendor.

Security Controls and Safeguards

The Postal Service will implement the DQI program in a secure fashion. The commercial vendor will supply the directory to the contractor during the pilot test, and to the Postal Service during any national deployment, where it will be kept in a secure maintenance facility. Access to information in the directory will be limited to the following circumstances and purposes: At the maintenance facility, the Postal Service or contractor will access the directory to remove non-AMS data as described above, as well as to allow the Postal Service to respond to requests by individuals for access to information maintained about them as required by the Privacy Act. The Postal Service will also access the directory in its Engineering Headquarters facility in order to test the success of the program. The maintenance and engineering facilities are the only two locations where information contained in the directory can be accessed by Postal Service or contractor employees.

When the directory is distributed to Postal Service field sites, both name and address information will be encrypted. There will be no ability to view, query, or modify records in the directory. At all times, the directory will be stored in a separate file from Postal Service databases. In addition, the directory's name information will be stored in a separate file from its address information.

The directory will only operate on secure systems. Electronic transmissions of updates to the directory will be protected by encryption and secure access authorization codes.

To keep information current as well as secure, the Postal Service will receive an updated commercial directory periodically, no less frequently than every 90 days. The Postal Service will match the directory against the AMS database every week to remove invalid addresses. The Postal Service will maintain two versions of the directory representing 2 weeks of data—the directory for the current week, and the directory for the prior week. Every week, when the next directory is created, the Postal Service will destroy the older version in accordance with its information security policies. The policies require degaussing for computer tapes, using zero-bit formatting for computer hard drives, and physically destroying floppy disks, CDs, and DVD data disks. After these procedures are conducted, previous versions will not be retained in any form.

Disclosures

The Postal Service does not anticipate adverse privacy effects resulting from Postal Service disclosures of information from the commercial directory. First, such information is commercially available. Any entity can obtain information contained in the directory from the commercial source. Second, the Postal Service has limited the external disclosures, or routine uses, of information from the directory.

For this system of records, the Postal Service will only employ seven of the

nine standard routine uses that it has issued for systems of records containing customer information. These customer systems and routine uses were published in the **Federal Register** on December 16, 2002 (67 FR 77088–77090). The seven routine uses that apply to this system relate to the following: (1) Disclosure incident to legal proceedings; (2) disclosure to agents, contractors, and partners; (3) disclosure to auditors; (4) disclosure for customer service purposes; (5) disclosures related to congressional inquiries; (6) disclosure to labor organizations; and (7) disclosure for law enforcement purposes. The Postal Service may only disclose information from the directory to appropriate law enforcement agencies if there are suspected illegal activities against the Postal Service, or as required by law. The standard routine uses that will not apply concern disclosures related to financial transactions, and disclosures to government agencies relating to personnel or contractor matters.

The Postal Service has also added a special routine use for this system. The routine use applies when a mailpiece containing a barcode applied using the commercial directory is returned to the mailer. This may occur if the mailpiece is still not delivered to an address after all Postal Service efforts have been exhausted—for instance, if the person does not live at that address—and the mailer is entitled to return service because the mailpiece was sent First-Class Mail® or the mailer otherwise paid for return service. If the mailer has access to the Postal Service ZIP+4 database and is familiar with Postal Service rules and algorithms for FDOS coding, the mailer may be able to determine the specific FDOS ZIP Code from the barcode. The Postal Service ZIP+4 database and rules for coding are available to mailers for a fee. ZIP Code information, including ZIP+4 codes and FDOS ZIP Codes for houses, is also available as part of the ZIP Code lookup Web site available on *USPS.com,* but only on a specific query basis, not as a database.

The Postal Service considers that disclosure of a barcode that contains a ZIP Code for an address may not be a disclosure under the Privacy Act. However, in the interests of full notice and transparency, the Postal Service is issuing a routine use to account for this occurrence. The Postal Service considers this an appropriate routine use because the Postal Service must honor return service requests. Moreover, the Postal Service considers the value of the information to be minimal in this circumstance, and the likelihood of such decoding to be remote. The information, which is a specific address, not name, is likely to be incorrect, since the mailpiece could not be delivered as addressed. Also, the mailer would need to train personnel to identify DQI mailpieces, and set up processes or equipment to conduct the algorithms needed to extract the address from the barcode. These processes are not technically practical, and are likely more costly than purchasing the same information directly from one of several available commercial sources.

Notice of Use of Information From a Third-Party Source

The system of records described by this notice entails a third-party source, as the Postal Service has determined that obtaining this information directly from the subject individuals is not practical. However, the information collected from the third-party source for this system shall in no case result in any adverse determination to individuals. The Postal Service will ensure that the third-party source is informed of the purposes for which the name and address records will be used. This is consistent with OMB Guidelines and Privacy Protection Study Commission recommendations related to 5 U.S.C. 552a (e)(3).

Summary

The Postal Service seeks to improve the accuracy and certainty of mail delivery. The Postal Service has developed a very sophisticated network and equipment to accomplish this result. Based on its extensive experience, the Postal Service considers that use of a commercially available name and address database, such as proposed for the DQI program, is the best method to achieve higher barcoding rates and more certain delivery. The Postal Service proposes use of the directory for this sole purpose, and has established effective safeguards to protect the information and prevent any other use.

USPS 500.100

SYSTEM NAME:

Address Matching for Mail Processing.

SYSTEM LOCATION:

Computer Operations Service Center; Engineering; Processing and Distribution Centers; and contractor site(s).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS customers, including individual and business customers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and mailing addresses of individuals and businesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404.

PURPOSE:

To improve the speed, accuracy, and certainty of mail delivery.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply, except that routine uses 3 and 6 do not apply. The following additional routine use also applies:

A mailpiece containing a barcode that is encoded with the address, but not name, of a customer derived from this system may be disclosed to a mailer if the Postal Service is unable to deliver the mailpiece, and returns it to the mailer as part of a requested return service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, electronic and computer storage media, with names and addresses stored separately.

RETRIEVABILITY:

Retrieval is accomplished by a computer-based system, using one or more of the following elements: name, ZIP Code(s), street name, primary number, secondary number, delivery point, and/or carrier route identification.

SAFEGUARDS:

The name and address database will be obtained from a commercial vendor under strict contract and security controls. The database will be maintained separately from Postal Service databases. Name data and address data within the commercial database will also be stored separate from each other. In field deployment, name and address data will be stored in an encrypted fashion. The database will not be commingled with any agency records or databases, and will not be used to update any agency record or database. No information will be provided from the Postal Service into the commercial database or back to the vendor.

The database will only operate on secure systems. Electronic transmissions of records are protected by encryption and access authorization codes. Records are kept on computers in controlled-access areas, with access limited to

authorized personnel. Computers are protected by a cipher lock system, card key system, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and use identifications, and file management. Contractors are subject to contract controls regarding security, as well as security compliance reviews by the Postal Service and Postal Inspection Service.

RETENTION AND DISPOSAL:

The database will be maintained until 90 days after termination of the contract or program, and then destroyed. During contract performance, the database will be replaced by the vendor in its entirety no less frequently than every 90 days. To destroy the replaced version, the Postal Service will employ sanitization procedures that will ensure the complete destruction of information as specified by its information security policies.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Vice President for Operations, United States Postal Service, 475 L'Enfant, Plaza, SW., Washington, DC 20260.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is kept in this system of records should address inquiries in writing to the Manager, Image Recognition Processing, 8403 Lee Highway, Merrifield VA 22082.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Commercially available source of names and mailing addresses.

Neva Watson,

Attorney, Legislative.

[FR Doc. 04–15855 Filed 7–13–04; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form 1, Rules 6a–1 and 6a–2; SEC File No. 270–0018; OMB Control No. 3235–0017.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995,[1] the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The Securities Exchange Act of 1934 (''Act'') sets forth a regulatory scheme for national securities exchanges. Rule 6a–1 under the Act[2] generally requires an applicant for initial registration as a national securities exchange to file an application with the Commission on Form 1. An exchange that seeks an exemption from registration based on limited trading volume also must apply for such exemption on Form 1. Rule 6a–2 under the Act[3] requires registered and exempt exchanges: (1) to amend the Form 1 if there are any material changes to the information provided in the initial Form 1; and (2) to submit periodic updates of certain information provided in the initial Form 1, whether such information has changed or not. The information required pursuant to Rules 6a–1 and 6a–2 is necessary to enable the Commission to maintain accurate files regarding the exchange and to exercise its statutory oversight functions. Without the information submitted pursuant to Rule 6a–1 on Form 1, the Commission would not be able to determine whether the respondent met the criteria for registration or exemption set forth in sections 6 and 19 of the Act. Without the amendments and periodic updates of information submitted pursuant to Rule 6a–2, the Commission would have substantial difficulty determining whether a national securities exchange or exempt exchange was continuing to operate in compliance with the Act.

The respondents to the collection of information are entities that seek registration as a national securities exchange or that seek exemption from registration based on limited trading volume. After the initial filing of Form 1, both registered and exempt exchanges are subject to ongoing informational requirements.

Initial filings on Form 1 by new exchanges are made on a one-time basis. The Commission estimates that it will receive approximately three initial Form 1 filings per year and that each respondent would incur an average burden of 47 hours to file an initial Form 1 at an average cost per response of approximately $4517. Therefore, the Commission estimates that the annual burden for all respondents to file the initial Form 1 would be 141 hours (one response/respondent × three respondents × 47 hours/response) and $13,551 (one response/respondent × three respondents × $4517/response).

There currently are nine entities registered as national securities exchanges and two exempt exchanges. The Commission estimates that each registered or exempt exchange files one amendment or periodic update to Form 1 per year, incurring an average burden of 25 hours to comply with Rule 6a–2. The Commission estimates that the annual burden for all respondents to file amendments and periodic updates to the Form 1 pursuant to Rule 6a–2 is 275 hours (11 respondents × 25 hours/response × one response/respondent per year) and $25,630 (11 respondents × $2330/response × one response/respondent per year).

Compliance with Rules 6a–1 and 6a–2 and Form 1 is mandatory for entities seeking to register as a national securities exchange or seeking an exemption from registration based on limited trading volume. Information received in response to Rules 6a–1 and 6a–2 and Form 1 shall not be kept confidential; the information collected is public information. As set forth in Rule 17a–1 under the Act,[4] a national securities exchange generally is required to retain records of the collection of information for at least five years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission by sending an e-mail to: *David_Rostker@omb.eop.gov*, and (b) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of

[1] 44 U.S.C. 3501 *et seq.*

[2] 17 CFR 240.6a–1.

[3] 17 CFR 240.6a–2.

[4] 17 CFR 240.17a–1.

Management and Budget within 30 days of this notice.

Dated: July 7, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16013 Filed 7–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 6a–3; SEC File No. 270–0015; OMB Control No. 3235–0021.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995,[1] the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 6 of the Securities Exchange Act of 1934 (''Act'')[2] sets out a framework for the registration and regulation of national securities exchanges. Under Commission Rule 6a–3,[3] one of the rules that implements section 6, a national securities exchange (or an exchange exempted from registration based on limited trading volume) must provide certain supplemental information to the Commission, including any material (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Rule 6a–3 also requires the exchanges to file monthly reports that set forth the volume and aggregate dollar amount of securities sold on the exchange each month. The information required to be filed with the Commission pursuant to Rule 6a–3 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The respondents to the collection of information are national securities exchanges and exchanges that are exempt from registration based on limited trading volume.

[1] 44 U.S.C. 3501 *et seq.*

[2] 15 U.S.C. 78f.

[3] 17 CFR 240.6a–3.

The Commission estimates that each respondent makes approximately 25 such filings on an annual basis at an average cost of approximately $21 per response. Currently, 11 respondents (nine national securities exchanges and two exempt exchanges) are subject to the collection of information requirements of Rule 6a–3. The Commission estimates that the total burden for all respondents is 137.5 hours (25 filings/respondent per year × 0.5 hours/filing × 11 respondents) and $5775 ($21/response × 25 responses/respondent per year × 11 respondents) per year.

Compliance with Rule 6a–3 is mandatory for registered and exempt exchanges. Information received in response to Rule 6a–3 shall not be kept confidential; the information collected is public information. As set forth in Rule 17a–1 under the Act,[4] a national securities exchange is required to retain records of the collection of information for at least five years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission by sending an e-mail to: *David_Rostker@omb.eop.gov*, and (b) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: July 7, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16014 Filed 7–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form N–5; SEC File No. 270–172; OMB Control No. 3235–0169.

[4] 17 CFR 240.17a–1.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') requests for extension of the previously approved collection of information discussed below.

Form N–5—Registration Statement of Small Business Investment Companies Under the Securities Act of 1933 and the Investment Company Act of 1940. Form N–5 is the integrated registration statement form adopted by the Commission for use by a small business investment company which has been licensed as such under the Small Business Investment Act of 1958 and has been notified by the Small Business Administration that the company may submit a license application, to register its securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''), and to register as an investment company under section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act''). The purpose of registration under the Securities Act is to ensure that investors are provided with material information concerning securities offered for public sale that will permit investors to make informed decisions regarding such securities. The Commission staff reviews the registration statements for the adequacy and accuracy of the disclosure contained therein. Without Form N–5, the Commission would be unable to carry out the requirements to the Securities Act and Investment Company Act for registration of small business investment companies. The respondents to the collection of information are small business investment companies seeking to register under the Investment Company Act and to register their securities for sale to the public under the Securities Act. The estimated number of respondents is two and the proposed frequency of response is annually. The estimate of the total annual reporting burden of the collection of information is approximately 352 hours per respondent, for a total of 704 hours. Providing the information on Form N–5 is mandatory. Responses will not be kept confidential. Estimates of the burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 6, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16015 Filed 7–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form N–8A; File No. 270–135; OMB Control No. 3235–0175.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information discussed below.

Form N–8A—Notification of Registration of Investment Companies. Form N–8A [17 CFR 274.10] is the form that investment companies file to notify the Commission of the existence of active investment companies. After an investment company has filed its notification of registration under section 8(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] (''1940 Act''), the company is then subject to the provisions of the 1940 Act which govern certain aspects of its organization and activities, such as the composition of its board of directors and the issuance of senior securities. Form N–8A requires an investment company to provide its name, state of organization, form of organization, classification, if it is a management company, the name and address of each investment adviser of the investment company, the current value of its total assets and certain other information readily available to the investment company. If the investment company is filing simultaneously its notification of registration and registration statement, Form N–8A requires only that the registrant file the cover page (giving its name, address and agent for service of process) and sign the form in order to effect registration.

The Commission uses the information provided in the notification on Form N–8A to determine the existence of active investment companies and to enable the Commission to administer the provisions of the 1940 Act with respect to those companies. Each year approximately 263 investment companies file a notification on Form N–8A, which is required to be filed only once by an investment company. The Commission estimates that preparing Form N–8A requires an investment company to spend approximately 1 hour so that the total burden of preparing Form N–8A for all affected investment companies is 263 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information on Form N–8A is mandatory. The information provided on Form N–8A is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or email to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 6, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16016 Filed 7–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form N–8B–2; SEC File No. 270–186; OMB Control No. 3235–0186.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information discussed below.

Form N–8B–2—Registration Statement of Unit Investment Trusts that are Currently Issuing Securities.

Form N–8B–2 is the form used by unit investment trusts (''UITs'') that are currently issuing securities, including UITs that are issuers of periodic payment plan certificates and UITs of which a management investment company is the sponsor or depositor, to comply with the filing and disclosure requirements imposed by section 8(b) of the Investment Company Act of 1940 [15 U.S.C. 80a–8(b)]. Form N–8B–2 requires disclosure about the organization of a UIT, its securities, the trustee, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Investment Company Act.

Based on the Commission's industry statistics, the Commission estimates that there would be approximately one initial filing on Form N–8B–2 and 11 post-effective amendment filings to the Form. The Commission estimates that each registrant filing an initial Form N–8B–2 would spend 44 hours in preparing and filing the Form and that the total hour burden for all initial Form N–8B–2 filings would be 44 hours. Also, the Commission estimates that each UIT filing a post-effective amendment to Form N–8B–2 would spend 16 hours in preparing and filing the amendment and that the total hour burden for all post-effective amendments to the Form would be 176 hours. By combining the total hour burdens estimated for initial Form N–8B–2 filings and post-effective amendments filings to the Form, the Commission estimates that the total

annual burden hours for all registrants on Form N–8B–2 would be 220. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8B–2 is mandatory. The information provided on Form N–8B–2 will not be kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or email to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 6, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16017 Filed 7–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49983; File No. SR–Amex–2004–40]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 thereto Relating to an Amendment to Amex Rule 131

July 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 10, 2004, the Amex amended the proposed rule change.[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 131. The text of the proposed rule change is set forth below. Proposed new language is in *italics.*

* * * * *

Rule 131. Types of Orders

(a) through (h) No change.

(i) A fill or kill order is a market or limited price order which is to be executed in its entirety as soon as it is represented in the Trading Crowd, and such order, if not so executed, is to be treated as cancelled. For purposes of this definition, a ''stop'' is considered an execution. *A fill or kill order for securities other than options sent to the order book electronically and not executed by Auto-Ex will be cancelled automatically.*

(j) No change.

(k) An immediate or cancel order is a market or limited price order which is to be executed in whole or in part as soon as such order is represented in the Trading Crowd, and the portion not so executed is to be treated as cancelled. For the purposes of this definition, a ''stop'' is considered an execution. *In the case of an immediate or cancel order for securities other than options sent to the order book electronically, any portion not executed by Auto-Ex will be cancelled automatically.*

Except as otherwise provided in the Plan, a ''commitment to trade'' received on the Floor through ITS shall be treated in the same manner, and entitled to the same privileges, as would an immediate or cancel order that reaches the Floor at the same time (i.e., the commitment shall be executed in whole or in part as soon as it reaches the Trading Crowd and any portion not so executed shall be cancelled); provided however, that such a commitment may not be ''stopped'' and the commitment shall remain irrevocable for the time period chosen by the sender of the commitment.

(l) through (t) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify the definitions of ''fill or kill'' (''FOK'') and ''immediate or cancel'' (''IOC'') orders for equity securities to provide that if these orders were to be sent to the book electronically, and were to not be executed by Auto-Ex, the orders would be cancelled automatically. Under the proposed rule change, a person sending an FOK or IOC order to the Exchange would receive an immediate electronic report of an execution, partial execution, or a nothing done. Orders sent to the book electronically with the FOK and IOC qualifiers, accordingly, would be processed automatically without any human intervention.

The Exchange believes that modifying the processing of FOK and IOC orders sent to the book electronically so that they are automatically cancelled if not executed automatically would conform Amex practice with respect to the handling of these orders to customer expectations. Currently, the Exchange frequently receives marketable orders for securities traded in an Auto-Ex environment immediately followed by a message to cancel the orders. The Exchange believes that the persons sending these related messages are seeking an immediate automatic execution to all or part of their orders and wish to cancel whatever quantity is not executed automatically. The Exchange thus believes that these persons would use the proposed FOK and IOC orders if they were available since these orders would provide for an immediate automatic execution or cancellation and an immediate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 9, 2004 (''Amendment No. 1''). In Amendment No. 1, the Amex replaced the proposed rule change in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

electronic report. The Exchange also anticipates that the proposed change to the processing of FOK and IOC orders would reduce message traffic by eliminating the need for persons seeking an immediate automatic execution or cancellation to send a separate cancellation message following the entry of the order.

The proposed rule change would not affect the processing of market and marketable limit orders that are sent to the order book electronically that are not subject to the FOK and IOC qualifications. Likewise, there would be no change to the processing of FOK and IOC orders sent to a floor broker for execution. The Exchange intends to implement the proposed revisions to IOC and FOK order processing when it implements its proposed enhanced Auto-Ex functionality.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5)[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

[6] *See,* Securities Exchange Act Release Nos. 49921 (June 25, 2004), 69 FR 40690 (July 6, 2004) (approval order); and 49449 (March 19, 2004), 69 FR 15411 (March 25, 2004) (notice) (SR–Amex–2004–04).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–40 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–40 and should be submitted on or before August 4, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15926 Filed 7–13–04; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

[11] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 10, 2004, the date on which the Amex filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49986; File No. SR–Amex–2004–37]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to a Change in the Options Transaction Fee Reductions for Non-Member Broker-Dealers in Connection With Cabinet Trades and Spread Trades

July 8, 2004.

On May 19, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to lower the amount of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

reductions of options transaction fees that are available to non-member broker-dealers in connection with equity options and QQQ options contracts executed as part of an accommodation or cabinet trade (''Cabinet Trades'') and reversals and conversions, dividend spreads, box spreads and butterfly spreads (''Spread Trades''). On May 28, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 10, 2004.[4] No comments were received regarding the proposal, as amended. This order approves the proposed rule change, as amended, on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6(b) of the Act[6] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to lower the amount of the reduction of options transaction fees applicable to non-member broker-dealers in connection with Cabinet Trades and Spread Trades is consistent with section 6(b)(4) of the Act,[7] which requires the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities. According to Amex, the proposed fee changes should better reflect the actual cost of transactions on the Exchange. Further, the proposal provides non-member broker-dealers with the same options fee reductions for Cabinet Trades and Spread Trades that are applicable to specialists, registered options traders (''ROTs'') and member broker-dealers.[8]

Amex requested accelerated approval of the proposal in order to provide for uniform options transaction fee reductions for non-member broker-dealers and specialists, ROTs and member broker-dealers. Therefore, Amex has requested that the Commission find good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The Commission notes that the proposal and Amendment No. 1 were noticed for the full 21-day comment period, and the Commission received no comments regarding the proposal, as amended. As discussed more fully above, the Commission believes that the proposed rule change is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities. The Commission also believes that adjusting the options transaction fee reductions applicable to non-member broker-dealers to equal the fee reductions applicable to specialists, ROTs and member broker-dealers for the same types of transactions will promote uniformity in options fees charged by the Exchange. Accordingly, the Commission finds good cause pursuant to section 19(b)(2) of the Act[9] to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–Amex–2004–37), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15927 Filed 7–13–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49978; File No. SR–CHX–2004–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Handling of Preopening Orders in Nasdaq/NM Securities

July 7, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2004, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend CHX Article XX, Rule 37, regarding the execution of preopening orders in Nasdaq/NM securities. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Guaranteed Execution System and Midwest Automated Execution System

RULE 37. (a) Guaranteed Executions. The Exchange's Guaranteed Execution System (the BEST System) shall be available, during the Primary Trading Session and the Post Primary Trading Session, to Exchange member firms and, where applicable, to members of a participating exchange who send orders to the Floor through a linkage pursuant to Rule 39 of this Article, in all issues in the specialist system which are traded in the Dual Trading System and [NASDAQ/NM] *Nasdaq/NM* Securities. System orders shall be executed pursuant to the following requirements:

(1) No change to text.

(2) No change to text.

(3) No change to text.

(4) Preopenings. Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening trading price. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in [NASDAQ/NM] *Nasdaq/NM* securities must be accepted and filled on a single price opening at or better than the NBBO at the first unlocked, uncrossed market *that occurs on or after 8:30 a.m., to the extent that those orders can be matched at a single price. The specialist will be responsible for executing any imbalance of shares in Nasdaq/NM securities left after the offset process, in accordance with Exchange rules that govern the handling of orders during the Primary Trading Session.* In trading halt situations,

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[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 27, 2004 (''Amendment No 1''). In Amendment No. 1, the Exchange corrected a typographical error in the text of the proposed rule change.

[4] *See* Securities Exchange Act Release No. 49800 (June 3, 2004), 69 FR 32639.

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 49763 (May 24, 2004), 69 FR 30967 (June 1, 2004) (notice of filing and immediate effectiveness of File No. SR–Amex–2004–28).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

orders will be executed based on the Exchange reopening price. For purposes of this rule, (a) preopening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote and (b) preopening orders in [NASDAQ/NM] *Nasdaq/NM* securities are orders received [at or]prior to *the opening of the Exchange market* [8:20 a.m. (Central Time)] on the date of the opening.

* * * * *

(b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

(1) No change to text.

(2) No change to text.

(3) No change to text.

(4) No change to text.

(5) Pre[-O]*o*pening Orders. [Pre-Opening] *Preopening* orders [that are less than or equal to the auto-acceptance threshold] will automatically be offset by the MAX System *at a single price at or better than the NBBO at the first unlocked, uncrossed market that occurs on or after 8:30 a.m., to the full extent that those orders can be matched at a single price.* The [S]specialist will *be responsible for executing* [only be required to take a position when there is] any imbalance of shares left after the offset process*, in accordance with Exchange rules that govern the handling of orders during the Primary Trading Session.* [Pre-Opening orders will be filled at the price specified in the BEST Rule for Pre-Opening orders.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Exchange's current rule, a CHX specialist must accept and execute all preopening orders in Nasdaq/NM securities on a single price opening at or better than the national best bid and offer (''NBBO'') at the first unlocked, uncrossed market.[3] A preopening order, for purposes of the rule, is an order received at or before 8:20 a.m. (Central Time) on the date of the opening. Under the current rule, the specialist is required to take a position when there is an imbalance of shares left after eligible orders are offset.[4] Orders received after 8:20 a.m. and before 8:30 a.m. (Central Time) are not guaranteed a fill at any particular price.

The Exchange proposes to change the operation of this rule to remove the distinction in the treatment of orders received at or before 8:20 a.m. and those received after 8:20 a.m. (Central Time) until the opening of trading. Under the proposed rule change, all orders received before the opening would be treated in the same manner. Specifically, under this proposal, an Exchange specialist would match, to the extent possible, all orders received before the Exchange's opening at a single price that is at or between the NBBO at the first unlocked, uncrossed market that occurs on or after 8:30 a.m. (Central Time).[5] The specialist would be responsible for executing any imbalance in shares left after the offset process, in accordance with Exchange rules that govern the handling of orders during the regular trading session.[6] As a result, the specialist no longer would guarantee that orders received before 8:20 a.m. (Central Time) would receive a fill—orders that could be matched, would be matched—any order imbalance would remain for handling by the specialist.[7] The Exchange believes that this proposed rule change is appropriate because it simplifies the procedures for the handling and execution of preopening orders. It also allows a specialist to better fulfill its overall order handling responsibilities by eliminating any different treatment of orders received before and after 8:20 a.m. (Central Time).[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[9] The CHX believes the proposal is consistent with section 6(b)(5) of the Act[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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[3] *See* CHX Article XX, Rule 37(a)(4). The NBBO is the price associated with the best bid and best offer disseminated pursuant to Rule 11Ac1–1 under the Act.

[4] *See* CHX Article XX, Rule 37(b)(5).

[5] *See* proposed CHX Article XX, Rules 37(a)(4) and 37(b)(4).

[6] These rules include the Exchange's rules relating to the execution of agency market, marketable limit and limit orders, as well as its rules relating to the precedence of orders in the CHX specialist's book. *See* CHX Article XX, Rules 37(a)(2) and 37(a)(3); CHX Article XXX, Rule 2.

[7] As a technical matter, the Exchange's MAX system would identify the single opening price, based on the orders in the book and, to facilitate the execution of the maximum number of orders at that price, would insert the specialist into the execution of each order. For example, if there were two buy orders (for 120 shares and 150 shares) and two sell orders (for 100 shares and 170 shares) that could be matched at a single price at or between the NBBO, the system would match each order against the specialist, at the appropriate price, resulting in four execution reports, one for each order. The specialist does not profit through this practice. Any other handling of the matching process—for example, trying to match 100 shares of the first buy order against the 100-share sell order, and 150 shares of the second buy order against the second sell order, leaving 20 shares of the first buy order and 20 shares of the second sell order to execute against each other—results in additional, unwanted execution reports to the Exchange's order-sending firms. The Exchange would report only one side of these transactions (the side with the highest number of reportable shares, representing the best indication of the trades that actually occurred) to the tape to ensure that this practice does not have any potentially inappropriate impact on the Exchange's tape revenue.

[8] Nothing in this proposed rule change, however, would prohibit a specialist, before the opening of the Exchange, from buying or selling in the over-the-counter market—for example, during Nasdaq's ''trade or move'' session—to position itself for the opening.

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78(f)(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2004–14 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–14 and should be submitted on or before August 4, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15876 Filed 7–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49981; File No. SR–CHX–2004–08]

Self-Regulatory Organizations; The Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendment No. 1 To Amend the CHX Membership Dues and Fees Schedule To Provide a Tape Credit of 50% to Specialists Trading Tape A and Tape B Securities

July 7, 2004.

On May 18, 2004, The Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its membership dues and fees schedule, effective February 1, 2004, to provide a tape credit of 50% to specialists trading Tape A and Tape B securities. On May 18, 2004, the CHX filed an amendment to the proposed rule change (''Amendment No. 1''), which amendment completely replaced and superseded the original proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on June 2, 2004.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. As set forth in its July 2, 2002 Order of Summary Abrogation (''Abrogation Order''),[6] the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow the CHX to provide a tape credit of 50% to specialists trading Tape A and Tape B securities, because the proposal will allow the CHX to operate a market data revenue-sharing program that is substantially similar to market data revenue-sharing programs operated by other markets.[7]

The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the CHX to provide a 50% tape credit to specialists trading Tape A and Tape B securities, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[9] that the proposed rule change (SR–CHX–2004–08) be, and it hereby is, approved, as amended.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49772 (May 26, 2004), 69 FR 31147.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (Order of Summary Abrogation).

[7] *See, e.g.*, Securities Exchange Act Release No. 46911 (November 26, 2002), 67 FR 72251 (December 4, 2002) (SR–BSE–2002–10).

[8] 15 U.S.C. 78f(b)(5)

[9] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15877 Filed 7–13–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before September 13, 2004.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Eunice Ricks, Business Development Specialist, Office of Business Initiatives, Small Business Administration, 409 3rd Street SW., Suite 6100, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Eunice Ricks, Business Development Specialist, (202) 205–7422 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''BIC Customer Satisfaction Survey.''

Description of Respondents: New, established and prospective Small Business Owners using the service and programs offered by the Business Information Center Program.

Form No.: 1916.

Annual Responses: 1,355.

Annual Burden: 68.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 04–15958 Filed 7–13–04; 8:45 am]

BILLING CODE 8025–01–P

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Telesoft Partners II SBIC, L.P.; License No. 09/79–0432; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Telesoft Partners II SBIC, L.P., 1450 Fashion Island Blvd., Suite 610, San Mateo, CA 94404, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Telesoft Partners II SBIC, L.P. proposes to provide equity/debt security financing to Sierra Design Automation, Inc. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Telesoft Partners II QP, L.P., Telesoft Partners II, L.P. and Telesoft NP Employee Fund, LLC, Associates of Telesoft Partners II SBIC, L.P., own more than ten percent of Sierra Design Automation, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: July 6, 2004.

Jeffrey Pierson,

Associate Administrator for Investment.

[FR Doc. 04–15957 Filed 7–13–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3586]

State of Ohio (Amendment #4)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 7, 2004, the above numbered declaration is hereby amended to include Harrison and Holmes Counties as disaster areas due to damages caused by severe storms and flooding occurring May 18, 2004, and continuing through June 21, 2004. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 2, 2004, and for economic injury the deadline is March 3, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 8, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–15956 Filed 7–13–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3594]

State of Wisconsin (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective July 2, 2004, the above numbered declaration is hereby amended to include Adams, Brown, Calumet, Chippewa, Clark, Crawford, Dane, Eau Claire, Grant, Green, Green Lake, Iowa, Jackson, Juneau, LaCrosse, Lafayette, Marathon, Marquette, Milwaukee, Monroe, Outagamie, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Taylor, Trempealeau, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, and Wood Counties as disaster areas due to damages caused by severe storms and flooding occurring on May 19, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Barron, Buffalo, Dunn, Kewaunee, Langlade, Lincoln, Manitowoc, Menominee, Oconto, Pepin, Price, and Rusk in the State of Wisconsin; Boone, Jo Daviess, Stephenson, and Winnebago Counties in the State of Illinois; Allamakee, Clayton, and Dubuque Counties in the State of Iowa; and Houston and Winona Counties in the State of Minnesota may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared. The number assigned to this disaster for economic injury is 9ZK600 for Iowa; and 9ZK700 for Minnesota.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 18, 2004, and for economic injury the deadline is March 21, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 7, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–15871 Filed 7–13–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3594]

State of Wisconsin (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 3, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on May 19, 2004, and continuing through July 3, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 18, 2004, and for economic injury the deadline is March 21, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 8, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–15955 Filed 7–13–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Small Business Administration Region VIII Regulatory Fairness Board

The Small Business Administration Region VIII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Friday, July 23, 2004 at 8:30 a.m. at Montana Business Incubator, Montana State University—Billings, College of Business, 100 Poly Drive, Suite 150, Billings, MT 59101, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Lorena Carlson in writing or by fax, in order to be put on the agenda. Lorena Carlson, Public Affairs Specialist, Montana District Office, 10 West 15th Street, Suite 1100, Helena, MT 59626, phone (406) 441–1081 Ext. 128, fax (406) 441–1090, e-mail: *lorena.carlson@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: July 8, 2004.

Peter Sorum,

Senior Advisor, Office of the National Ombudsman.

[FR Doc. 04–15954 Filed 7–13–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4761]

Culturally Significant Objects Imported for Exhibition Determinations: ''All the Mighty World: The Photographs of Roger Fenton, 1852–1860''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition ''All the Mighty World: The Photographs of Roger Fenton, 1852–1860,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington DC, from on or about October 17, 2004, until on or about January 2, 2005, at the J. Paul Getty Museum, Los Angeles, CA from on or about February 1, 2005, until on or about April 24, 2005, at the Metropolitan Museum of Art, New York, NY from on or about May 16, 2005, until on or about August 14, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 7, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–16073 Filed 7–13–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4762]

Culturally Significant Objects Imported for Exhibition Determinations: ''Art Deco 1910–1939''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition ''Art Deco 1910–1939,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museum of San Francisco, from on or about March 6, 2004, until on or about July 5, 2004, at the Museum of Fine Arts Boston from on or about August 22, 2004, until on or about January 9, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 7, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–16074 Filed 7–13–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4760]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Colonial Andes: Tapestries and Silverwork, 1530–1830''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition ''The Colonial Andes: Tapestries and Silverwork, 1530–1830'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York from on or about September 27, 2004, to on or about December 12, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects covered by this Notice, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, U.S. Department of State, telephone: (202) 619–5078. The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 2, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–16072 Filed 7–13–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4763]

Determination Pursuant to Executive Order 13224 Relating to Continuity Irish Republican Army

In consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I have amended the designation of Continuity Irish Republican Army pursuant to Executive Order 13224 to add the following names as aliases: Continuity Army Council; Republican Sinn Fein.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

Dated: July 9, 2004.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 04–16081 Filed 7–13–04; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Nigeria has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Nigeria qualify for the textile and apparel benefits provided under the AGOA.

DATES: Effective July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Patrick Coleman, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist U.S. Customs and Border Protection in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Nigeria as a ''beneficiary sub-Saharan African country.'' Proclamation 7350 delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Nigeria has taken, I have determined that Nigeria has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting ''Nigeria'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act,* 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 04–15858 Filed 7–13–04; 8:45 am]

BILLING CODE 3190–WH–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18512]

Highway Safety Programs; Model Specifications for Devices To Measure Breath Alcohol

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments that conform to the Model Specifications for Evidential Breath Testing Devices (62 FR 62091).

EFFECTIVE DATE: July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Frank, Office of Research and Technology, Behavioral Research Division (NTI–131), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–5593.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications as Appendix D to that notice (49 FR 48864).

On September 17, 1993, NHTSA published a notice (58 FR 48705) to amend the Model Specifications. The notice changed the alcohol concentration levels at which instruments are evaluated, from 0.000, 0.050, 0.101, and 0.151 BAC, to 0.000, 0.020, 0.040, 0.080, and 0.160 BAC; added a test for the presence of acetone; and expanded the definition of alcohol to include other low molecular weight alcohols including methyl or isopropyl. On October 3, 2002, the most recent amendment to the Conforming Products List (CPL) was published (67 FR 62091), identifying those instruments found to conform with the Model Specifications.

Since the last publication of the CPL, two (2) instruments have been evaluated and found to meet the model specifications, as amended on September 17, 1993, for mobile and non-mobile use. In alphabetical order by company, they are: (1) The Alcotest 6510 manufactured by Draeger Safety, Inc., Durango, CO. This is a hand held device intended for use in stationary or roadside operation and is powered by an internal battery. It uses a fuel cell sensor. (2) The Alco-Sensor FST manufactured by Intoximeters, Inc, St. Louis, MO. This is a hand held device intended for use in stationary or roadside operation and is powered by an internal battery. It uses a fuel cell sensor. Finally, a technical correction has to be made in the name of one device on the CPL. The current CPL lists the ''Intox EC/IR 2'' manufactured by Intoximeters, Inc., St. Louis, MO, but the device should be listed as ''Intox EC/IR II.''

The CPL has been amended to add the two instruments identified above to the list, and to make the one technical correction indicated.

In accordance with the foregoing, the CPL is therefore amended, as set forth below.

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasure Systems Corp. Mississauga, Ontario, Canada:		
Alert J3AD*	X	X
Alert J4X.ec	X	X
PBA3000C	X	X
BAC Systems, Inc., Ontario, Canada: Breath Analysis Computer*	X	X
CAMEC Ltd., North Shields, Tyne and Ware, England: IR Breath Analyzer*	X	X
CMI, Inc., Owensboro, KY:		
Intoxilyzer Model:		
200	X	X
200D	X	X
300	X	X
400	X	X
400PA	X	X
1400	X	X
4011*	X	X
4011A*	X	X
4011AS*	X	X
4011AS–A*	X	X
4011AS–AQ*	X	X
4011 AW*	X	X
4011A27–10100*	X	X
4011A27–10100 with filter*	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000 (w/3/8″ ID Hose option)	X	X
5000CD	X	X
5000CD/FG5	X	X
5000EN	X	X
5000 (CAL DOJ)	X	X
5000VA	X	X
8000	X	X
PAC 1200*	X	X
S–D2	X	X
S–D5	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
Draeger Safety, Inc., Durango, CO:		
Alcotest Model:		
6510	X	X
7010*	X	X
7110*	X	X
7110 MKIII	X	X
7110 MKIII–C	X	X
7410	X	X
7410 Plus	X	X
Breathalyzer Model:		
900*	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410–II	X	X
Gall's Inc., Lexington, KY: Alcohol Detection System—A.D.S. 500	X	X
Intoximeters, Inc., St. Louis, MO:		
Photo Electric Intoximeter*		X
GC Intoximeter MK II*	X	X
GC Intoximeter MK IV*	X	X
Auto Intoximeter*	X	X
Intoximeter Model:		
3000*	X	X
3000 (rev B1)*	X	X
3000 (rev B2)*	X	X
3000 (rev B2A)*	X	X
3000 (rev B2A) w/FM option*	X	X
3000 (Fuel Cell)*	X	X
3000 D*	X	X
3000 DFC*	X	X
Alcomonitor		X
Alcomonitor CC	X	X
Alco-Sensor III	X	X
Alco-Sensor III (Enhanced with Serial Numbers above 1,200,000)	X	X
Alco-Sensor IV	X	X
Alco-Sensor IV–XL	X	X
Alco-Sensor AZ	X	X
Alco-Sensor FST	X	X
RBT–AZ	X	X
RBT III	X	X
RBT III–A	X	X
RBT IV	X	X
RBT IV with CEM (cell enhancement module)	X	X
Intox EC/IR	X	X
Intox EC/IR II	X	X
Portable Intox EC/IR	X	X
Komyo Kitagawa, Kogyo, K.K.:		
Alcolyzer DPA–2*	X	X
Breath Alcohol Meter PAM 101B*	X	X
Lifeloc Technologies, Inc., (formerly Lifeloc, Inc.), Wheat Ridge, CO:		
PBA 3000B	X	X
PBA 3000–P*	X	X
PBA 3000C	X	X
Alcohol Data Sensor	X	X
Phoenix	X	X
FC 10	X	X
FC 20	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK:		
Alcolmeter Model:		
300	X	X
400	X	X
SD–2*	X	X
EBA*	X	X
Intoxilyzer Model:		
200	X	X
200D	X	X
1400	X	X
5000 CD/FG5	X	X
5000 EN	X	X
Luckey Laboratories, San Bernadino, CA:		
Alco-Analyzer Model:		
1000*		X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
2000*	.....	X
National Draeger, Inc., Durango, CO:		
Alcotest Model:		
7010*	X	X
7110*	X	X
7110 MKIII	X	X
7110 MKIII–C	X	X
7410	X	X
7410 Plus	X	X
Breathalyzer Model:		
900*	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410–II	X	X
National Patent Analytical Systems, Inc., Mansfield, OH:		
BAC DataMaster (with or without the Delta–1 accessory)	X	X
BAC Verifier DataMaster (with or without the Delta–1 accessory)	X	X
DataMaster cdm (with or without the Delta–1 accessory)	X	X
Omicron Systems, Palo Alto, CA:		
Intoxilyzer Model:		
4011*	X	X
4011AW*	X	X
Plus 4 Engineering, Minturn, CO: 5000 Plus4*	X	X
Seres, Paris, France:		
Alco Master	X	X
Alcopro	X	X
Siemans-Allis, Cherry Hill, NJ:		
Alcomat*	X	X
Alcomat F*	X	X
Smith and Wesson Electronics, Springfield, MA:		
Breathalyzer Model:		
900*	X	X
900A*	X	X
1000*	X	X
2000*	X	X
2000 (non-Humidity Sensor)*	X	X
Sound-Off, Inc., Hudsonville, MI:		
AlcoData	X	X
Seres Alco Master	X	X
Seres Alcopro	X	X
Stephenson Corp.: Breathalyzer 900*	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, CA:		
Alco-Analyzer 1000	.....	X
Alco-Analyzer 2000	.....	X
Alco-Analyzer 2100	X	X
Verax Systems, Inc., Fairport, NY:		
BAC Verifier*	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II*	X	X

*Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (*i.e.*, instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC). Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160. All instruments that meet the Model Specifications currently in effect (dated September 17, 1993) also meet the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.1)

Issued on: July 9, 2004.

Marilena Amoni,

Associate Administrator for Program Development and Delivery.

[FR Doc. 04–15970 Filed 7–13–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–17623; Notice 2]

Cooper Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) has determined that certain tires it manufactured during 2004 do not comply with S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on May 7, 2004 in the **Federal**

Register (69 FR 25655). NHTSA received one comment.

S6.5(f) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with ''the actual number of plies and the composition of the ply cord material in the sidewall.'' Cooper produced approximately 148 size 11R24.5 Cooper and Mastercraft brand tubeless radial tires during the period from February 29, 2004 through March 6, 2004 that do not comply with FMVSS No. 119, S6.5(f). These tires were marked ''tread 5 plies steel; sidewall 1 ply steel,'' when they should have been marked ''tread 4 plies steel; sidewall 1 ply steel.''

Cooper stated that the incorrect number of steel tread plies was removed from the molds by buffing and the correct number of steel tread plies inserted; however, prior to the molds being correctly stamped, 148 tires were inadvertently shipped.

Cooper stated that the incorrect number of steel tread plies on each tire does not present a safety issue. Cooper explained:

> The involved tires have been redesigned by Cooper, and the fifth steel belt removed. This change was done to improve tread wear resistance and has no effect on the tire's ability to meet all applicable DOT testing standards. The certification data from the redesigned four steel ply construction showed no remarkable difference when compared to the equivalent certification data for the previous five ply steel construction. Both sets of data are well in excess of DOT requirements.

Cooper stated that the involved tires comply with all other requirements of FMVSS No. 119.

One comment was received in response to the notice of receipt. The commenter, Barb Sashaw of Florham Park, NJ, stated:

> I do not think there should be any exemption for Cooper Tires. This company violated federal standards. Cooper tried to make money since 5 ply cots [sic] more than 4 ply and Cooper would then make higher profits. It may have been a blatant attempt to steal money because consumers would pay more for an inferior tire.

The issue to be considered in determining whether to grant this petition is the effect of the noncompliance on motor vehicle safety. The comment does not address this issue, and therefore is not persuasive in its argument that the petition should not be granted.

The agency agrees with Cooper's statement that the incorrect designation of 5 plies when there were actually 4 plies in each tire does not present a serious safety concern. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted.

Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in a tire.

In addition, the tires are certified to meet all the performance requirements of FMVSS No. 119. All other informational markings as required by FMVSS No. 119 are present. Cooper has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Cooper's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: July 7, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–15973 Filed 7–13–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18556; Notice 1]

General Motors Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain 2004 model year Saab 9–3 Sport Sedans and Convertibles do not comply with S4.2(b) of 49 CFR 571.114, Federal Motor Vehicle Safety Standard (FMVSS) No. 114, ''Theft protection.'' GM has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of GM's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Within a total of approximately 4032 model year 2004 Saab 9–3 Sport Sedans and Convertibles equipped with a manual transmission, approximately 11 are affected. S4.2(b) of FMVSS No. 114 requires that ''[e]ach vehicle shall have a key-locking system which, whenever the key is removed, prevents either steering or forward self-mobility of the vehicle or both.'' The affected vehicles were produced with an ignition key locking system that contains a center spring plate switch that can bind in the closed position. This switch communicates to certain vehicle systems that the ignition key has been inserted or removed. When this switch binds in the closed position, certain systems will read that the ignition key is still in the ignition switch, even after ignition key removal. One of the systems using the input from this switch is the electronic steering column lock to meet the S4.2 requirement of FMVSS No. 114. If a vehicle has the aforementioned condition, the steering column will not lock upon ignition key removal.

GM believes that the noncompliance is inconsequential to motor vehicle safety for the following reasons stated in its petition:

> Continued Theft Protection: FMVSS No. 114 was developed to increase road safety by reducing the risk of traffic accidents resulting from unauthorized vehicle operation. All Saab 9–3 vehicles are equipped with an electronic engine immobilizer system that prevents engine operation in the absence of the vehicle's ignition key from the ignition switch module. The immobilizer remains fully operation[al] on vehicles with the aforementioned condition present. Although a vehicle could be steered with this condition, the engine could not be started, even through hot-wiring or other vehicle manipulation. GM considers the immobilizer system to be at least as effective as a steering column lock in preventing vehicle theft. NHTSA and Highway Loss Data Institute data have also confirmed the effectiveness of passively activated engine immobilizers such as that present on the 9–3.

Overt Symptoms: When this condition occurs, the symptoms are very obvious to the customer. Upon key removal the radio/CD player stays on, interior lights will not operate and the remote door locking function will not operate. Additionally, even though the key has been removed, the key warning system will activate when the driver's door is opened. These symptoms will induce the customer to return to the dealer for repairs under the new car warranty.

Failure Occurs Early and only a Small Percentage of Vehicles are Affected: If this condition is present, it is most likely to occur very early in the vehicle's life. In an analysis performed by the component supplier (Delphi), it was estimated that of the components affected by this condition, 85 percent would fail within the first month and 99 percent would fail within six months. Most occurrences have been and will be caught prior to retail delivery. * * * It has been estimated by the supplier of the ignition switch assembly that as of the end of April 2004, a maximum of 15 additional vehicles might experience this condition. Saab warranty data show that 4 warranty repairs have been performed since May 1, 2004. Therefore, based on this projection, a maximum of 11 additional units could be expected to be subject to this condition. We would expect any of these additional instances to occur over the next few months.

GM states that the problem has been corrected.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 13, 2004.

Authority (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 7, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–15972 Filed 7–13–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34503]

Timber Rock Railroad, Inc.—Lease Exemption—The Burlington Northern and Santa Fe Railway Company

Timber Rock Railroad, Inc. (TRRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease and to operate approximately 117.82 miles of rail line owned by The Burlington Northern and Santa Fe Railway Company (BNSF): (1) Between milepost 4.5 near Beaumont, TX, and milepost 21.8 near Silsbee, TX; (2) between milepost 52.5 near Dobbin, TX, and milepost 152.56 at Silsbee, TX, and (3) between milepost 0.5 and milepost 0.96 near Kirbyville, TX.[1] TRRR will also acquire incidental overhead trackage rights over 54.72 miles of BNSF's rail line: (1) Between milepost 4.5 near Beaumont, TX, and milepost 2.28 at Beaumont, TX; and (2) between milepost 52.5 near Dobbin, TX, and milepost 144.0 on the BNSF Galveston Subdivision at Somerville, TX, for the purpose of interchanging traffic with BNSF.

TRRR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or a Class I rail carrier. But, because TRRR's projected annual revenues will exceed $5 million, TRRR has certified to the Board on May 4, 2004, that it sent the required notice of the transaction on May 3, 2004, to the national offices of all labor unions representing employees on the affected lines and posted a copy of the notice at the workplace of the employees on the affected lines on May 2, 2004. *See* 49 CFR 1150.42(e).

[1] BNSF will retain the right to operate certain overhead trains over the lines being leased by TRRR.

The transaction was scheduled to be consummated on or after July 3, 2004 (which is 60 days or more after TRRR's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e)).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34503, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. Also, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 2, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–15718 Filed 7–13–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 647X)[1]

CSX Transportation, Inc.—Abandonment Exemption—In Darlington County, SC

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 1.49-mile line of the Southern Region, Florence Division, Hamlet Subdivision, between milepost SJ 306.13 (V.S. 387+15) and milepost 307.39 (V.S. 465+62.5), in Darlington County, SC. The line traverses United States Postal Service ZIP Code 29550.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the

[1] Due to administrative oversight, this notice was not served and published as scheduled on July 7, 2004. The notice is being served on July 8, 2004, and it will be published in the **Federal Register** as soon as possible.

Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been meet.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 6, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under CFR 1152.29 must be filed by July 19, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 27, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.[4]

A copy of any petition filed with the Board should be sent to the applicant's representative: Louis E. Gitomer, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 12, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by July 7, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 29, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–15936 Filed 7–13–04; 8:45 am]

BILLING CODE 4915–01–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1102.2(f)(25).

[4] Each trail use request must be accompanied by the filing fee, which currently is set at $200. *See* 49 CFR 1002.2(f)(27).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 6, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 13, 2004, to be assured of consideration.

Departmental Offices/Office of Economic Policy/Trip Program

OMB Number: 1505–0193.

Form Numbers: None.

Type of Review: Reinstatement.

Title: Terrorism Risk Insurance Survey.

Description: This information collection is required for a study mandated under the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297). Three survey waves will be collected over the period 2003–2005. Treasury will use the survey data to assess the effectiveness of the Terror Risk Insurance Program and unlikely industry capacity after the Program sunsets in 2005, and to measure annual terror risk insurance premiums. A report from the Secretary of the Treasury to Congress, is due no later than June 30, 2005.

Respondents: Business or other for-profit, not-for-profit institutions, farms, State, local or tribal government.

Estimated Number of Respondents: 5,350.

Estimated Burden Hours Per Respondent: 2 hours, 31 minutes.

Frequency of Response: Annually, other (ends after 2005).

Estimated Total Reporting/Recordkeeping Burden: 13,500 hours.

Clearance Officer: Lois K. Holland, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220, (202) 622–1563.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–15929 Filed 7–13–04; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 1, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 13, 2004, to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0036.

Form Number: TTB F 5100.1.

Type of Review: Extension.

Title: Signing Authority for Corporate Officials.

Description: TTB F 5100.1 is substituted instead of a regulatory requirement to submit corporate documents or minutes of a meeting of the Board of Directors to authorize an individual or office to sign for the corporation in TTB matters. The form identifies the corporation, the individual or office authorized to sign, and documents the authorization.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 250 hours.

OMB Number: 1513–0041.

Form Number: TTB F 5110.28.

Recordkeeping Requirement ID Number: TTB REC 5110/03.

Type of Review: Extension.

Title: Distilled Spirits Plant Monthly Report of Processing Operations.

Description: The information collection is necessary to account for and verify the processing of distilled spirits in bond. It is used to audit plant operations, monitor industry activities for efficient allocation of personnel resources and the compilation of statistics.

Respondents: Business of other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 134.

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.

Frequency of Response: Monthly.

Estimated Total Reporting/ Recordkeeping Burden: 3,886 hours.

OMB Number: 1513–0113.

Form Number: TTB F 5360.5R and TTB F 5630.5RC.

Type of Review: Extension.

Title: TTB F 5360.5R: Special Tax Renewal Registration and Return; and TTB F 5630.5RC: Special Tax Location Registration Listing.

Description: 26 U.S.C. Chapters 51, 52 and 53 authorize collection of special taxes from persons engaging in certain businesses. TTB Forms 5630.5R and 5630.5RC are used to compute tax and as an application for registry.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 350,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 100,500 hours.

Clearance Officer: William H. Foster, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005, (202) 927–8210.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–15930 Filed 7–13–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 6, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 13, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0099.

Form Number: IRS Form 1065, Schedule D, and Schedule K–1.

Type of Review: Revision.

Title: Form 1965: U.S. Return of Partnership Income; Schedule D: Capital Gains and Losses; and Schedule K–1: Partner's Share of Income, Credits, Deductions, etc.

Description: Internal Revenue Code (IRC) section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and for general statistics.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 2,376,800.

Estimated Burden Hours Respondent/ Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1065	42 hr., 27 min	25 hr., 21 min	44 hr., 3 min	4 hr., 49 min.
Sch. D (Form 1065)	6 hr., 56 min	2 hr., 34 min	2 hr., 48 min	
Sch. K–1 (Form 1065)	20 hr., 34 min	6 hr., 9 min	6 hr., 46 min	

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 786,658,611 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–15931 Filed 7–13–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 7, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 13, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0121.

Form Number: IRS Form 1116.

Type of Review: Revision.

Title: Foreign Tax Credit (Individual, Estate, or Trust).

Description: Form 1116 is used by individuals (including nonresident aliens) estates or trusts who paid foreign income taxes on U.S. taxable income to compute the foreign tax credit. This information is used by the IRS to verify the foreign tax credit.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 4,000,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—2 hr., 43 min.

Learning about the law or the form—1 hr., 6 min.

Preparing the form—2 hr., 51 min.

Copying, assembling, and sending the form to the IRS—34 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 24,599,093 hours.

OMB Number: 1545–0172.

Form Number: IRS Form 4562.

Type of Review: Revision.

Title: Depreciation and Amortization (Including Information on Listed Property).

Description: Taxpayers use Form 4562 to: (1) Claim a deduction for depreciation and/or amortization; (2) make a section 179 election to expense depreciable assets; and (3) answer questions regarding the use of automobiles and other listed property to substantiate the business use under section 274(d).

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 6,500,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—38 hr., 29 min.

Learning about the law or the form—4 hr., 16 min.

Preparing and sending the form to the IRS—5 hr., 5 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 294,402,500 hours.

OMB Number: 1545–1058.

Form Number: IRS Form 8655.

Type of Review: Extension.

Title: Reporting Agent Authorization.

Description: Form 8655 allows a taxpayer to designate a reporting agent to file certain employment tax returns electronically, and to submit Federal tax deposits. This form allows IRS to disclose tax account information and to provide duplicate copies of taxpayer correspondence to authorized agents. Reporting agents are persons or organizations preparing and filing electronically the federal tax returns and/or submitting federal tax deposits.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 110,000.

Estimated Burden Hours Respondent: 6 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 11,000 hours.

OMB Number: 1545–1430.

Form Number: IRS Forms 945, 945–A, and 945–V.

Type of Review: Revision.

Title: Form 945: Annual Return of Withheld Federal Income Tax; Form 945–A: Annual Record of Federal Tax Liability; and Form 945–V: Payment Voucher.

Description: Form 945 is used to report income tax withholding on Nonpayroll payments including backup withholding and withholding on pensions, annuities, IRA's, military retirement and gambling winnings. Form 945–A is used to report Nonpayroll tax liabilities. Form 945–V is used by those who submit a payment with their return.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 193,468.

Estimated Burden Hours Respondent/ Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
945	5 hr., 15 min	47 min	55 min.
945–A	6 hr., 27 min	6 min	12 min.
945–V	14 min	0 min	0 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 2,077,017 hours.

OMB Number: 1545–1751.

Regulation Project Number: REG–107151–00 Final.

Type of Review: Extension.

Title: Constructive Transfers and Transfers of Property to a Third Party on Behalf of a Spouse.

Description: The regulation sets forth the required information that will permit spouses or former spouses to treat a redemption by a corporation of stock of one spouse or former spouse as a transfer of that stock to the other spouse or former spouse in exchange for the redemption proceeds and a redemption of the stock from the latter spouse or former spouse in exchange for the redemption proceeds.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Respondent/ Recordkeeper: 30 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 500 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–15932 Filed 7–13–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under VA Homeless Providers Grant and Per Diem Program; Grants for Services to Chronically Mentally Ill Homeless Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Notice of fund availability.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for currently operational VA Homeless Providers Grant and Per Diem Recipients that are providing services at the time of the application to make applications for assistance in the delivery of services to the homeless chronically mentally ill veteran population. The focus of this Notice of Fund Availability (NOFA) under the Special Needs Grant Component of VA's Homeless Providers Grant and Per Diem (GPD) Program is to encourage applicants to collaborate with VA Health Care Facilities in the delivery of such services. This NOFA contains information concerning the program, application process, and amount of funding available.

DATES: *Application deadline.* An original completed and collated grant application (plus three completed collated copies) for each project seeking assistance under this NOFA must be received in the VA Homeless Providers Grant and Per Diem Field Office, by 4 p.m. eastern time on August 17, 2004. Applications may not be sent by facsimile (FAX), e-mail, or other electronic means. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline.

Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Homeless Providers Grant and Per Diem Program Web page at: *http://www.va.gov/homeless/page.cfm?pg=3* or call the VA Homeless Providers Grant and Per Diem Program Field Office at (toll-free) 1–877–332–0334. For a document relating to the VA's Homeless Providers Grant and Per Diem Program, see the regulations at 38 CFR part 61.

Submission of Application: An original completed and collated grant application (plus three copies) for each project must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–100, Tampa, FL 33617. Applications must be received in the VA Homeless Providers Grant and Per Diem Field Office by the application deadline. Applications must arrive as a complete package. *For those agencies that choose to collaborate with a VA Health Care Facility the documentation to be provided by the VA collaborative partner for assurance of non-duplication of services through collaboration must be included with the application package (see Funding Priority 1).* Materials arriving separately will not be included in the application package for consideration. If all materials are not included in the application package, it will result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Guy Liedke, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–100, Tampa, FL 33617; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This NOFA announces the availability of funds for assistance under the VA Homeless Providers Grant and Per Diem Program (Program) for eligible operational grant and per diem recipients to receive grant assistance with additional operational costs *that would not otherwise be incurred* but for the fact that the recipient is providing supportive housing beds and services or at service centers for the special needs of the chronically mentally ill homeless veteran population.

''Chronically mentally ill'' is for purposes of this Program defined in 38 CFR 61.1, Definitions, as: * * * a condition of schizophrenia or major affective disorder (including bipolar disorder) or post-traumatic stress disorder (PTSD), based on a diagnosis from a licensed mental health professional, with at least one documented hospitalization for this condition sometime in the last 2 years or with documentation of a formal assessment on a standardized scale of any serious symptomology or serious impairment in the areas of work, family relations, thinking, or mood.''

It is widely accepted by the mental health community that the chronically mentally ill population requires additional resources due to the intensive nature of their care.

Additionally, it has been noted that a significant contributing factor to homelessness is chronic mental illness. Consequently, VA has decided to offer funding to providers who serve this special need population in a separate NOFA. In an effort to prevent non-duplication of services, encourage cost effectiveness, and ensure the use of appropriate models for treatment of the chronically mentally ill, a funding priority will be given to applicants who collaborate their delivery of services to this veteran population with their local VA Medical Center by agreeing to use a portion of their funding to provide services within the guidelines of the models listed in this NOFA.

VA is seeking, through this NOFA, to identify and select several grant and per diem providers and VA Health Care Facilities to collaborate through the use of the ''Critical Time Intervention'' (CTI) model and ''Vet-to-Vet'' (VTV) counseling/assistance model with ''Permanent Housing Assistance'' (PHA) that will involve treatment of the chronically mentally ill homeless veteran population. Eligible applicants that choose to provide these types of services to the homeless chronically mentally ill will be given a funding priority (*see* Funding Priority 1). Additionally, VA anticipates that not all eligible entities will have the ability to deliver services in collaboration as listed above and therefore encourages all eligible faith-based and community entities regardless of service delivery method and type to seek funding under this NOFA (*see* Funding Priority 2).

Public Law 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001, authorizes this Program. It authorizes grants to be offered to both VA health care facilities and operational grant and per diem providers to encourage development by those facilities and providers of programs for homeless veterans with special needs (38 U.S.C. 2061).

Grant and per diem providers may only apply under this Notice for: The provision of service, operation, or personnel with regard to the homeless chronically mentally ill special needs veteran population.

Generally, providers may, in addition to establishing the Vet-to-Vet/Permanent Housing Assistance model, offer the following:

Chronically Mentally Ill:

(1) Help participants join in and engage with the community;

(2) Facilitate reintegration with the community and provide services that may optimize reintegration, such as life-skills education, recreational activities, and follow-up case management;

(3) Ensure that participants have opportunities and services for re-establishing relationships with family;

(4) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants, either directly or through referral, to obtain other services particularly relevant for a chronically mentally ill population, such as vocational development, benefits management, fiduciary or money management services, medication compliance, and medication education.

Note: Successful applicants will be required to designate at least one representative from the organization to attend a post-award conference. The conference will be held in Washington, DC and is expected to extend over a two-day period. Applicants will be required to cover costs of travel, lodging, and meals associated with their attendance at the post-award conference; however, these costs can be included in budgets submitted for consideration for reimbursement of allowable costs under the grant.

No part of a special need grant may be used for any purpose that would change significantly the scope of the specific grant and per diem project for which a capital grant and per diem was awarded. As a part of the review process, VA will review the original project listed in the special need application to ensure significant scope changes do not occur displacing other homeless veteran populations. VA may reject for Special Needs Funding those applications that significantly alter the original scope (38 CFR 61.62).

Example 1: A provider currently has 50 beds and finds in the course of normal operation that at any given time the project is serving 20 homeless veterans who are chronically mentally ill. This provider could apply for special needs funding to assist in the additional operational costs that are incurred due to providing services to these 20 chronically mentally ill homeless veterans.

Example 2: A provider currently has 50 beds and finds in the course of normal operation that the addition of a staff member would allow the project to serve homeless chronically mentally ill veterans who must be currently referred to other sources. This provider could apply for special needs funding to assist in the additional operational costs that are incurred due to development of providing services to homeless chronically mentally ill veterans.

Example 3: A provider currently has 50 beds serving the general homeless veteran population and now wants to serve ''only'' chronically mentally ill homeless veterans in the 50 beds. This provider could not apply for special needs funding, as it would significantly alter the scope of the original project.

A separate special needs application is required for each previously funded grant and per diem project identified by unique project number (*see* Application Requirements in this NOFA).

Special needs funding *may not* be used for capital improvements or to purchase vans or real property. However, the leasing of vans or real property may be acceptable. Questions regarding acceptability should be directed to VA's Homeless Providers Grant and Per Diem Field Office, at 1–877–332–0334. Applicants may not receive special needs assistance to replace funds provided by any Federal, State, or local government agency or program to assist homeless persons.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Pub. L. 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001, section 5(a)(1), codified at 38 U.S.C. chapter 20 (38 U.S.C. 2001 through 2066). The program is implemented by regulations at 38 CFR part 61, codifying final rules published in the **Federal Register** on September 26, 2003 (68 FR 55467), and on June 8, 2004 (69 FR 31883) (revising, effective July 8, 2004, 38 CFR 61.64, *Religious organizations*). The regulations can be found in their entirety in 38 CFR 61.0 through 61.82. Funds made available under this NOFA are subject to the requirements of those regulations.

Allocation: Approximately $7.5 million is available for the Chronically Mentally Ill (CMI) Homeless Providers Grant and Per Diem grant component of this program. Funding will be for a period not to exceed 36 months, beginning on January 1, 2005. Based on the amount of funding available, the maximum allowable funding to any one operational Grant and Per Diem Special Needs recipient will be $250,000.00 per project, per year, for three (3) years for a total of $750,000.00. Based on Grant and Per Diem funding availability, approximately $6.4 million is expected to be made available over 3 years (internally) for the VA collaborative partners, if any. Maximum funding for VA collaborative partners is $215,000.00 per project, per year, for (3) three years, beginning in FY 2005, for a total of $645,000.00 per project. The goal will be to fund 10 CMI GPD projects and 10 VA collaborative partners supporting homeless chronically mentally ill veterans in 20 to 40 beds in each project.

It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor services provided to homeless veterans and outcomes associated with the services provided in grant and per diem-funded programs. Applicants should be aware of the following:

VA per diem payment is limited to the applicant's cost of care per eligible veteran minus other sources of payments to the applicant for furnishing services to homeless veterans up to the per day rate VA pays for State Home Domiciliary care, which is currently $27.19. Additionally, potential applicants should take into consideration the provisions of 38 CFR 61.61(h): ''Grant recipients that concurrently receive per diem and special needs payments shall not be paid more than 100 percent of the cost for the bed per day, product, operation, personnel, or service provided.'' Awardees will be required to support their request for per diem and special needs payments with adequate fiscal documentation as to program income and expenses.

All awardees that are conditionally selected in response to this NOFA must meet the Life Safety Code of the National Fire and Protection Association as it relates to their specific facility. VA will conduct an inspection or review a current inspection prior to awardees being able to submit a request for payment, to ensure this requirement is met.

Each grant awardee will have the VA liaison that was appointed for its corresponding grant and per diem program monitor services to ensure the special needs grant is being met.

Monitoring will include at least an annual review of each program's progress toward meeting internal goals and objectives in helping the chronically mentally ill homeless veterans as identified in each applicant's original special need application. Monitoring for all participants will also include a review of the agency's income and expenses as they relate to this project to ensure per diem and special needs payments are accurate.

Monitoring of Homeless CMI participants and services provided by GPD recipients and VA collaborative partners will be accomplished according to Northeast Program Evaluation Center (NEPEC) procedures. In the event that the special needs funded program has chosen a collaborative partner, participation in the NEPEC monitoring will also include the collaborative partner. These monitoring procedures will be used to determine successful accomplishment of outcomes for each funded program.

VA encourages all faith-based and community organizations that are eligible entities to carefully review this

NOFA and consider applying for funds to provide services for special needs homeless veteran populations.

Funding Priorities: VA establishes the following funding priorities in order to: (1) Implement the provisions of Public Law 107–95 regarding non-duplication of service and the mandate to make funding available to both the health care facilities of the Department and Grant and Per Diem Providers; (2) promote collaboration between providers and the Department's health care facilities in the delivery of quality services to the chronically mentally ill special needs populations in a cost effective manner, and (3) address geographic dispersion. In this round of special needs funding, VA expects to award approximately $7.5 million to operational Grant and Per Diem applicants to support beds, services, products, operation, or personnel directly serving the chronically mentally ill special needs homeless veteran population.

Funding priority 1. Eligible operational grant and per diem recipients that choose to (1) focus on serving the needs of the most severe chronically mentally ill with the longest duration of homelessness and (2) collaborate and provide services with a VA collaborative partner as outlined in the models below, and provide documentation of the same in the form of a Memorandum of Agreement (MOA) will be grouped in the first funding priority. The goal will be to fund approximately 10 collaborative projects. Not more than one (1) homeless chronically mentally ill special needs grant will be awarded to the same Grant and Per Diem recipient (defined by tax identification number), and no more than two (2) grants will be awarded to the VA collaborative partner (defined by VA medical facility) regardless of priority. With this criteria, of those eligible entities in the first funding priority that are legally fundable, the highest scoring applicant will be funded first, followed by the second highest scoring applicant, and then by the next highest scoring applicant until 10 collaborative projects are funded. Using the guidance above, should the goal not be met and if funding is still available, remaining funding will go to the second funding priority.

First Funding Priority MOA and Service Delivery Information: The VA collaborative partner will provide the Critical Time Intervention program and the community-based grant and per diem project will provide the Vet-to-Vet with Permanent Housing Assistance program for chronically mentally ill homeless veterans [as is being sought under the Special Needs Grant Component of VA's Homeless Providers Grant and Per Diem Program.] These programs are to be jointly implemented by VA health care facilities and community-based grant and per diem provider programs, working closely together. These programs will have three components: (i) Critical Time intervention, a time-limited intensive case management intervention for homeless veterans with severe mental illness; (ii) the Vet-to-Vet peer education program coupled with Permanent Housing Assistance; and (iii) time-limited residential treatment offered through the community-based program that is a grant and per diem provider program.

Responsibilities of the VA health center facility (VA collaborative partner): The VA collaborative partner will only provide services to eligible veterans. The VA collaborative partner will also provide the Critical Time Intervention (CTI). It is most likely that staff of the Health Care for Homeless Veterans (HCHV) Program will be able to take the lead in developing the CTI Initiative. CTI is a time-limited intervention designed to provide intensive case management to severely mentally ill homeless veterans to assure their successful transition to the community. Each CTI program will be based on a multidisciplinary team with at least 3 clinicians/case managers. One member of the team must also function as clinical evaluator to facilitate the collection of program information between all parties. The team should also include social workers, nurses or other appropriate personnel with skills in community-based service delivery. Caseloads will be low, similar to those in Assertive Community Treatment (ACT).

The work of the VA CTI team can be described in three phases. During the first phase (3 months) the team establishes a working relationship with the homeless veteran to identify their needs and develop a treatment plan and begin its implementation. During this period the treatment plan is implemented, where possible and appropriate, with placement in a grant and per diem residence on a time-limited basis.

The second 3 months is focused on the transition to the community and to a permanent housing placement wherever possible or another appropriate long-term arrangement where specifically indicated.

The third 3-month period would be devoted to a transition out of the VA CTI Program and into mainstream permanent housing coupled with mainstream mental health and general medical clinical supports as needed.

A primary portal of entry for this program would be inpatient units where the most seriously troubled, dually diagnosed, homeless veterans could also be referred from other sources. Severity of the population's need and duration of homelessness will be important considerations in application reviews. The target population would be veterans who have been homeless for 30 days or more (when last in the community) and who have severe mental illness and co-morbid substance abuse. A second target population would be severely mentally ill homeless veterans who had been homeless for less than a month, are in need of intensive services, but were not currently hospitalized. A third target population would be severely mentally ill veterans who are not literally homeless at present but who have been homeless in the past and are currently at high risk for homelessness.

Responsibilities of the community-based grant and per diem provider program: While VA staff would implement the CTI Program, their efforts would be to coordinate with the grant and per diem provider who would provide time limited residential treatment and develop the Vet-to-Vet and Permanent Housing Assistance program. Staff from the Grant Per Diem Provider Program will support the development of peer education programs, under the Vet-to-Vet model, and initiate community-based housing support through the Permanent Housing Assistance model which would be available for participants in the VA CTI Program, as well as for other homeless veterans receiving treatment through the grant and per diem provider.

The Vet-to-Vet Program is based on a model of peer education, specifically targeted at veterans with serious mental illness. In this educational effort, veterans with serious mental illness, many of whom have been homeless, provide a daily group activity in which homeless veterans with mental illnesses learn from each other how to cope with serious mental illness and how to cope with leaving the ranks of homelessness and return to living as independently as possible in society. Peer educator groups meet every day on an elective basis. While staff may help initiate the program, it is operated by veterans for themselves and the peer counselors are paid for their efforts.

The Permanent Housing Assistance Program is based on community referral models and community supported-housing program models successfully implemented to assist the chronically mentally ill homeless population

transition to and maintain permanent housing. The Permanent Housing Assistance Program includes designated staff that are knowledgeable about the local community's housing resources; have the abilities to appropriately refer veterans to this housing after careful assessment of each veteran's needs, capabilities, and supportive/financial resources; and are able to provide on-going case management support while veterans are transitioning and eventually living independently in the community. Ongoing follow-up and aftercare strategies are an integral part of the permanent housing assistance program.

Evaluation Procedures and Internal Review Board (IRB) Approval. VA health care facilities that apply for this initiative should be aware that while the evaluation protocol will be designed centrally by VA's Northeast Program Evaluation Center (NEPEC), the VA health care facility will be responsible for having the protocol reviewed by the local Internal Review Board to get proper approval of the written informed consent that veterans will have to sign to participate in the evaluation. NEPEC will provide all necessary materials as well as technical support to assist programs in obtaining this approval. Sites involved in this program do not need to have any previous evaluation experienced staff, as NEPEC staff will guide them through the necessary procedures. Grant and per diem providers should be aware that their staff will be required to participate in training, such as ethics, patient confidentiality, and other similar activities in order to facilitate the evaluation and services to the CMI homeless.

Funding priority 2. Should funding still be available, eligible operational grant and per diem applicants that choose not to collaborate or are unable to collaborate with VA Health Care Facilities will be grouped in the second funding priority. Not more than one (1) special need grant will be awarded to the same Grant and Per Diem recipient (defined by tax identification number). Of those eligible entities in the second funding priority, that are legally fundable, the highest scoring applicants will be funded first until funding is expended.

Agreement and Funding Actions: Conditionally selected applicants will complete a funding agreement with VA in accordance with 38 CFR 61.61 and provide any additional information as required by VA under 38 CFR part 61. Upon signature by the Secretary or designated representative final selection will be completed.

Funding for operational grant and per diem applicants that are finally selected will be for a period not to exceed 36 months beginning on January 1, 2005. VA collaborative partners of finally selected applicants will be funded in accordance with Department internal fiscal guidance for a period of 36 months beginning on January 1, 2005.

Should either the VA collaborative partner or GPD provider not provide services as outlined in their application and MOA, VA may deobligate or discontinue payments for special needs grants to either or both collaborative partners.

A condition to obtain the Special Needs Grant is for the applicant to maintain the original (grant or per diem) program for which the special needs grant is sought. This is not a problem when considering eligible capital grantees. However, by VA calculation it is possible that some of the eligible ''Per Diem Only'' applicant programs would have their original award expire prior to fully utilizing the special needs funding. This is counterproductive to the intent of the special needs grant. Therefore, if finally selected, ''Per Diem Only'' applicants will be considered to have met the reapplication requirements of 38 CFR 61.33(b) and their corresponding per diem only award will be extended to run concurrently with their special needs grant. Example: A ''Per Diem Only'' award funded in 2003 would expire in 2006. Based on the funding availability date of January 1, 2005, if selected under this special need NOFA that corresponding PDO award would be extended to December 31, 2007.

Application Requirements: A separate application is needed for each project number for which you are requesting Chronically Mentally Ill Special Needs Funding. A project number is the last two digits of the year funded, the sequence the application was received, and the State abbreviation for the project location (*e.g.*, 00–125–MA would have been funded in the year 2000, the 125th application received, and the project is located in Massachusetts). If you do not know your project number, call the VA Homeless Providers Grant and Per Diem Field Office (toll-free) at 1–877–332–0334.

The grant application requirements are specified in the application package and this NOFA. The package includes the applicant's required forms and certifications. Additional collaborative documentation as outlined in this NOFA is needed to collaborate with a VA health care facility for the purpose of this grant. Selections will be made based on criteria described in the application and this NOFA. Applicants who are selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Eligible operational grant and per diem recipients that choose to participate in the study must provide a jointly signed Memorandum of Agreement (MOA) with the applicant agency and the VA collaborative partner under which, if funded, the VA health care facility and the community-based grant and per diem provider agree to offer the services, staff, and documentation as described in the evaluation procedures developed by NEPEC.

Dated: July 8, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–15965 Filed 7–13–04; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under VA Homeless Providers Grant and Per Diem Program; Grants for Services to Women, Frail Elderly, or Terminally Ill Homeless Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Notice of fund availability.

SUMMARY: The Department of Veterans Affairs is announcing the availability of funds for currently operational Homeless Providers Grant and Per Diem Recipients that are providing services at the time of the application to make applications for assistance in the delivery of services to the homeless veteran population of women, including women who have care of minor dependents; frail elderly; or terminally ill. The focus of this Notice of Fund Availability (NOFA) under the special needs grant component of VA's Homeless Providers Grant and Per Diem Program is to encourage applicants to collaborate with VA Health Care Facilities in the delivery of such services. This NOFA contains information concerning the program, application process, and amount of funding available.

DATES: *Application deadline.* An original completed and collated grant application (plus three completed collated copies) for each special need

population and project seeking assistance under this NOFA must be received in the VA Homeless Providers Grant and Per Diem Field Office by 4 p.m. eastern time on August 17, 2004. Applications may not be sent by facsimile (fax), e-mail, or other electronic means. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program Web page at: *http://www.va.gov/homeless/page.cfm?pg=3* or call the Grant and Per Diem Program at (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, *see* the regulations at 38 CFR part 61.

Submission of Application: An original completed and collated grant application (plus three copies) for each special need population and project must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–100, Tampa, FL 33617. Applications must be received in the Grant and Per Diem Field office by the application deadline. Applications must arrive as a complete package. *For those agencies that choose to collaborate with a VA Health Care Facility, the documentation to be provided by the VA collaborative partner for assurance of non-duplication of services through collaboration must be included with the application package (see Funding Priorities).* Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Guy Liedke, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–100, Tampa, FL 33617; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This NOFA announces the availability of funds for assistance under the VA Homeless Providers Grant and Per Diem Program (Program) for eligible operational grant and per diem recipients with and without VA collaborative partners to assist with additional operational costs *that would not otherwise be incurred* but for the fact that the recipient is providing beds or services in supportive housing or at a service center for the following homeless veteran populations:

Women, including women who have care of minor dependents;
Frail elderly; or
Terminally ill.

Public Law 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001, authorizes this Program. No part of a special needs grant may be used for any purpose that would change significantly the scope of the project for which a capital grant and per diem was awarded. As a part of the review process VA will review the original project listed in the special needs application to ensure significant scope changes do not occur, displacing other homeless veteran populations. VA may reject for special needs funding those applications that significantly alter the original scope (38 CFR 61.62).

Example 1: A provider currently has 50 beds and finds in the course of normal operation that at any given time the project is serving 20 homeless veterans that are frail elderly. This provider could apply for special needs funding to assist in the additional operational costs that are incurred due to providing services to these 20 frail elderly homeless veterans.

Example 2: A provider currently has 50 beds and finds in the course of normal operation that the addition of a staff member would allow the project to serve homeless women veterans that it must currently refer to other sources. This provider could apply for special needs funding to assist in the additional operational costs that are incurred due to development of providing services to homeless women veterans.

Example 3: A provider currently has 50 beds serving the general homeless veteran population and now wants to serve ''only women'' homeless veterans in the 50 beds. This provider could not apply for special needs funding, as it would significantly alter the scope of the original project.

Example 4: A provider currently has 50 beds and finds in the course of normal operation that at any given time the project is serving 10 homeless frail elderly veterans and 6 homeless women veterans. This provider could apply for special needs funding to assist in the additional operational costs that are incurred due to providing services to both of these populations.

Note: A separate application is needed for each population and the provider would use the same project number on each application.

A separate special needs application is required for each previously funded grant and per diem project, for each special population targeted to be served (*see Application Requirements* in this NOFA).

Use of Funding: Special Needs funding *may not* be used for capital improvements or to purchase vans or real property. However, the leasing of vans or real property may be acceptable. Questions regarding acceptability should be directed to VA's Homeless Providers Grant and Per Diem Field Office, at 1–877–332–0334. Applicants may not receive special needs assistance to replace funds provided by any Federal, State, or local government agency or program to assist homeless persons.

Funding applied for under this notice may be used for: the provision of service, operation, or personnel to facilitate the following with regard to the targeted group:

Women, including women who have care of minor dependents:

(1) Ensure transportation for women and their children, especially for health care and educational needs;
(2) Provide directly or offer referrals for adequate and safe child care;
(3) Ensure children's health care needs are met, especially age appropriate wellness visits and immunizations; and
(4) Address safety and security issues including segregation procedures from other program participants if deemed appropriate.

Frail Elderly:

(1) Ensure the safety of the residents in the facility to include preventing harm and exploitation;

(2) Ensure opportunities to keep residents mentally and physically agile to the fullest extent through the incorporation of structured activities, physical activity, and plans for social engagement within the program and in the community;

(3) Provide opportunities for participants to address life-transitional issues and separation and/or loss issues;

(4) Provide access to assistance devices such as walkers, grippers, or other devices necessary for optimal functioning;

(5) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(6) Provide opportunities for participants either directly or through referral for other services particularly relevant for the frail elderly, including services or programs addressing emotional, social, spiritual, and generative needs.

Terminally Ill:

(1) Help participants address life-transition and life-end issues;

(2) Ensure that participants are afforded timely access to hospice services;

(3) Provide opportunities for participants to engage in ''tasks of dying,'' or activities of ''getting things in order'' or other therapeutic actions that help resolve end of life issues and enable transition and closure;

(4) Ensure adequate supervision including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants either directly or through referral for other services particularly relevant for terminally ill such as legal counsel and pain management.

Note: Successful applicants will be required to designate at least one representative from the organization to attend a post-award conference. The conference will be held in Washington, DC, and is expected to extend over a two-day period. Applicants will be required to cover costs of travel, lodging, and meals associated with their attendance at the post-award conference; however, these costs can be included in budgets submitted for consideration for reimbursement of allowable costs under the grant.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Pub. L. 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001, section 5(a)(1), codified at 38 U.S.C. chapter 20 (38 U.S.C. 2001 through 2066). The program is implemented by regulations at 38 CFR part 61, codifying final rules published in the **Federal Register** on September 26, 2003 (68 FR 55467), and on June 8, 2004 (69 FR 31883) (revising, effective July 8, 2004, 38 CFR 61.64, Religious organizations). The regulations can be found in their entirety in 38 CFR 61.0 through 61.82. Funds made available under this notice are subject to the requirements of those regulations.

Allocation: Approximately $8.4 million is available for services to assist women, including women who have care of minor dependents; frail elderly; or terminally ill under the special needs grant component of this Program. Funding will be for a period not to exceed 36 months, beginning on January 1, 2005. Based on the amount of funding available the maximum allowable funding to any one operational Grant and Per Diem Special Needs recipient project will be $200,000.00, per year, for three (3) years for a total of $600,000.00. Based on Grant and Per Diem funding availability, approximately $6.3 million is expected to be made available over 3 years (internally) for the VA collaborative partners, if any. Maximum funding for the VA collaborative partners is $150,000.00 per project, per year, for (3) three years, beginning in FY 2005, for a total of $450,000.00 per project. The goal will be to fund 14 collaborative projects.

It is important for interested organizations to know that in addition to the needs associated with the homeless veteran populations targeted in this NOFA, the vast majority of homeless veterans in this country suffer from mental illness or substance abuse disorders or are dually diagnosed with both mental illness and substance abuse disorders. Also, many homeless veterans have serious medical problems. *Collaboration with VA medical centers, VA community-based outpatient clinics or other health care providers to address these needs is an important aspect of assuring that homeless veterans have access to appropriate health care services.* Opportunities to form collaborations with VA partners may exist in the linking of innovative Women's Heath Care treatment models or Health Care for Homeless Veterans Programs at VA Medical Centers with the provider's use of transitional housing, permanent housing referral, and extended follow-up mechanisms. These linkages may prove to be effective methodologies to deliver collaborative services to these populations and are encouraged. In addition, providers linking with VA Geriatrics and Extended Care Programs at VA Medical Centers may find similar benefits in collaborating their delivery of services to the frail elderly and terminally ill homeless veteran populations.

Public Law 107–95 authorizes grants to be offered to both VA Health Care Facilities and operational Grant and Per Diem Providers to encourage development by those facilities and providers of programs for homeless veterans with special needs (38 U.S.C. 2061). In an effort to prevent non-duplication of services and encourage cost effectiveness, a funding priority will be given to applicants who collaborate their delivery of services to the special need homeless veterans population with their local VA Medical Center (VAMC) or VA Community Based Outpatient Clinic (CBOC), VA Women's Program, Health Care for Homeless Veterans (HCHV) Program, Domiciliary Care for Homeless Veterans (DCHV) Program or other VA specialty programs at a VAMC or VA CBOC that may be instrumental in developing programs to address the special needs of homeless veterans (*see Funding Priorities* below for specifics).

It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor services provided to homeless veterans and outcomes associated with the services provided in grant and per diem-funded programs. Applicants should be aware of the following:

VA per diem payment is limited to the applicant's cost of care per eligible veteran minus other sources of payments to the applicant for furnishing services to homeless veterans up to the per day rate VA pays for State Home Domiciliary care, which is currently $27.19. Additionally, potential applicants should take into consideration the provisions of 38 CFR 61.61(h): ''Grant recipients that concurrently receive per diem and special needs payments shall not be paid more than 100 percent of the cost for the bed per day, product, operation, personnel, or service provided.'' VA would expect that programs that apply for special needs funding that will serve special needs homeless veterans in less than 20 beds will adjust their request for funding appropriately to be cost effective. Awardees will be required to support their request for per diem and special needs payments with adequate fiscal documentation as to program income and expenses.

All awardees that are conditionally selected in response to this NOFA must meet the Life Safety Code of the National Fire and Protection Association as it relates to their specific facility. VA will conduct an inspection or review the current inspection prior to awardees being able to submit a request for payment, to ensure this requirement is met.

Each special needs grant awardee will have the VA liaison that was appointed for its corresponding grant and per diem program monitor services to ensure the special needs grant is being met.

Monitoring will include at least an annual review of each program's progress toward meeting internal goals and objectives in helping special needs homeless veterans as identified in each applicant's original special needs application. Monitoring will also include a review of the agency's income and expenses as they relate to this project to ensure per diem and special needs payments are accurate.

Each special needs funded program will participate in VA's national program monitoring and evaluation system administered by VA's Northeast Program Evaluation Center (NEPEC). In the event that the special needs funded program has chosen a collaborative partner; participation in the NEPEC program will also include the collaborative partner. NEPEC's monitoring procedures will be used to

determine successful accomplishment of the special needs outcomes for each funded program.

VA encourages all eligible faith-based and community organizations that are eligible entities to carefully review this NOFA and consider applying for funds to provide services for special needs homeless veteran populations.

Funding Priorities: VA establishes the following funding priorities in order to: (1) Implement the provisions of Public Law 107–95 regarding non-duplication of service and the mandate to make funding available to both the health care facilities of the Department and Grant and Per Diem Providers; (2) promote collaboration between providers and the Department's health care facilities in the delivery of quality services to special needs populations identified in this NOFA in a cost effective manner, and (3) address geographic dispersion. In this round of special needs funding under this NOFA, VA expects to award approximately $8.4 million to operational Grant and Per Diem applicants to support beds, services, products, operation, or personnel directly serving the special needs homeless veteran populations.

Funding priority 1. Eligible operational grant and per diem recipients that choose to collaborate and provide documentation from a VA collaborative partner as outlined below in the form of a Memorandum of Agreement (MOA) will be grouped in the first funding priority. The goal will be to fund approximately 14 collaborative projects; two (2) in each special needs population for a total of 6. The remaining 8 projects may come from any of the special populations. Not more than two (2) special needs grants will be awarded to the same Grant and Per Diem recipient (defined by tax identification number), and no more than one grant per special needs population will be awarded to the VA collaborative partner (defined by VA medical facility), allowing a total of three (3) regardless of priority. With this criteria, of those eligible entities in the first funding priority, that are legally fundable, the highest scoring applicant will be funded first in each special needs population, followed by the second highest scoring applicant for each special needs population and then by the next highest scoring applicant from any special population until 14 collaborative projects are funded. Using the guidance above, should the goal not be met and if funding is still available, remaining funding will go to the second funding priority. Applicants not funded in the first priority will be placed in the second funding priority.

Documentation is to be provided by the VA collaborative partner in a jointly signed MOA with the applicant agency stating that if funded the VA collaborative partner will provide the services as outlined in the MOA. The MOA must document the non-duplication of services through collaboration and must address the following:

The special population and number to be served;

The extent and level of services that will be provided by the VA collaborative partner;

How these services compliment and not duplicate the services provided by the applicant;

Process and outcome measures clearly delineated and linked to service delivery and responsibilities for collection, compilation, and reporting of these measures;

Approximate cost to provide these services per year, and over the life of the grant; and

The VA collaborative partner will only provide services to eligible veterans.

Funding priority 2. Should funding still be available, eligible operational grant and per diem applicants that choose not to collaborate or are unable to collaborate with VA Health Care Facilities will be grouped in the second funding priority. Not more than two (2) special needs grants will be awarded to the same Grant and Per Diem recipient (defined by tax identification number). Of those eligible entities in the second funding priority, that are legally fundable, the highest scoring applicants regardless of special needs population will be funded first until funding is expended.

Agreement and Funding Actions: Conditionally selected applicants will complete a funding agreement with VA in accordance with 38 CFR 61.61 and provide any additional information as required by VA under 38 CFR part 61. Upon signature by the Secretary or designated representative final selection will be completed.

Funding for operational grant and per diem applicants that are finally selected will be for a period not to exceed 36 months beginning on January 1, 2005. VA collaborative partners of finally selected applicants will be funded in accordance with Department internal fiscal guidance for a period of 36 months beginning on January 1, 2005. Should either of the collaborative partners not provide services as outlined in their application and MOA, VA may deobligate or discontinue payments for special needs grants to one or both collaborative partners.

A condition to obtain the special needs grant is for the applicant to maintain the original (Grant or Per Diem) program for which the special needs grant is sought. This is not an issue for eligible capital grantees. However, it is possible that some of the eligible ''Per Diem Only'' applicant programs would have their original award expire prior to fully utilizing the special needs funding. This is counterproductive to the intent of the special need grant. Therefore, if finally selected, ''Per Diem Only'' applicants will be considered to have met the reapplication requirements of 38 CFR 61.33(b) and their corresponding Per Diem Only award will be extended to run concurrently with their special needs grant. Example: A ''Per Diem Only'' award funded in 2003 would expire in 2006. Based on the funding availability date of January 1, 2005, if selected under this special need NOFA that corresponding PDO award would be extended to December 31, 2007.

Application Requirements: A separate application is needed for each project number and special needs population for which you are requesting special need funding. Example: If your operational grant project serves both frail elderly and women, a separate application is needed for each population and you would use the same project number on each application. A project number is the last two digits of the year funded, the sequence the application was received, and the state abbreviation for the project location (*e.g.*, 00–125–MA would have been funded in the year 2000, the 125th application received, and the project is located in Massachusetts). If you do not know your project number call the VA Homeless Providers Grant and Per Diem Field Office (toll-free) at 1–877–332–0334.

The grant application requirements are specified in the application package and this NOFA. The package includes the applicant's required forms and certifications. Additional collaborative documentation as outlined in this NOFA is needed if the applicant chooses to collaborate with a VA health care facility. Selections will be made based on criteria described in the application and this NOFA. Applicants who are selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds

and to use the funds available for other grant and per diem applicants.

Dated: July 8, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–15966 Filed 7–13–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for applications for assistance under the Technical Assistance Grant component of VA's Homeless Providers Grant and Per Diem Program. This notice contains information concerning the program, application process, and amount of funding available.

DATES: An original completed and collated grant application (plus three completed collated copies) for assistance under the VA's Homeless Providers Grant and Per Diem Program must be received in the Grant and Per Diem Field Office on August 17, 2004. Applications may not be sent by facsimile (fax). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program Web page at: *http://www.va.gov/ homeless/ page.cfm?pg=3* or call the Grant and Per Diem Program at (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the final rule codified at title 38 Code of Federal Regulations (CFR) 61.0.

Submission of Application: An original completed and collated grant application (plus three copies) must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–100, Tampa, FL 33617. Applications must be received in the Grant and Per Diem Field office by the application deadline. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Guy Liedke, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 North 46th Street, Suite C–100, Tampa, FL 33617; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible non-profit entities with expertise in preparing grant applications relating to the provision of assistance for homeless veterans to: Provide technical assistance to those non-profit community-based groups with experience in providing assistance to homeless veterans in order to help such groups apply for grants under the final rule, published in the **Federal Register**, September 26, 2003, or to apply for other grants from any source for addressing the problems of homeless veterans.

Public Law 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001, authorizes this program. Funding applied for under this notice may be used for: (a) Group or individual seminars providing general instructions concerning grant applications; (b) Group or individual seminars providing instructions for applying for a specific grant; or (c) Group or individual instruction for preparing analyses to be included in a grant application. Seminars (course of instruction) may be delivered in electronic, face-to-face, and correspondence methodologies (*e.g.*, Internet based training, video teleconferencing, computer media such as CD or disk).

Entities that are interested in providing technical assistance should be aware that historically the Grant and Per Diem Program office receives over 1,200 nationwide inquiries per Notice of Fund Availability from prospective applicants. It is estimated that an additional 1,000 inquiries are received nationwide at VA Medical Center Homeless Programs. From these inquiries, VA has seen an increase in the number of applicants each year. Approximately 100 to 300 applications per funding round have been received in past responses to Notices of Fund Availability (NOFAs) under VA's Homeless Providers Grant and Per Diem Program. Additionally, faith-based organizations that are capable of providing supported housing and/or supportive service center services for homeless veterans have figured prominently into the mix of non-profit organizations seeking funding. Approximately 2500 beds in 115 programs have come from faith-based organizations. Those entities applying to provide technical assistance should consider not only the numbers but the diversity of the service provider seeking assistance when establishing their service plans.

The applicant for this funding will be expected to develop an integrated technical assistance plan, using funds for purposes as specified in this NOFA, the objectives of the program rules and regulations, as well as the intent of Public Law 107–95, to offer technical assistance to agencies in their-specified target area. Applicants should take note that they will be held accountable to provide to VA documentation that demonstrates the objectives of technical training are being met throughout the course of the award cycle and documentation that clearly demonstrates the completion of technical assistance objectives were met, cumulatively, at the end of the funding period. Also, VA intends to conduct both fiscal and performance reviews at least bi-annually of the awarded agency(s). The technical assistance should not only raise the awareness of providers regarding the availability of funds to assist homeless veterans but also increase providers' proficiency in applying for funds to assist homeless veterans. Applicants should take the aforementioned into consideration when developing a technical assistance plan. Outcomes measures that are specific and measurable should be an integral part of the technical assistance plan that is submitted in the application.

Grant applicants may not receive assistance to replace funds provided by any State or local government for the same purpose.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Public Law 107–95, section 5(a)(1), the Homeless Veterans Comprehensive Assistance Act of 2001 codified at title 38 United States Code (U.S.C.) 2011, 2012, 2061, 2064 and has been extended through Fiscal Year 2005. The program is implemented by the final rule codified at title 38 CFR 61.0. The regulations can be found in their entirety in title 38 CFR 61.0 through 61.82. Funds made available under this notice are subject to the requirements of those regulations.

Allocation: Approximately $1.5 million is available for the technical assistance grant component of this program. Funding will be for a period not to exceed 2 years from the date of award.

Funding Priorities: None.

Application Requirements: The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Selections will be made based on criteria described in the application. Applicants who are selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the time in which to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: July 8, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–15967 Filed 7–13–04; 8:45 am]

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Federal Register

Wednesday,
July 14, 2004

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 189 and 700

Use of Materials Derived From Cattle in Human Food and Cosmetics; and Recordkeeping Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle; Final Rule and Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 189 and 700

[Docket No. 2004N–0081]

RIN–0910–AF47

Use of Materials Derived From Cattle in Human Food and Cosmetics

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule (interim final rule) to prohibit the use of certain cattle material, to address the potential risk of bovine spongiform encephalopathy (BSE), in human food, including dietary supplements, and cosmetics. Prohibited cattle materials include specified risk materials, small intestine of all cattle, material from nonambulatory disabled cattle, material from cattle not inspected and passed for human consumption, and mechanically separated (MS)(Beef). Specified risk materials are the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older; and the tonsils and distal ileum of the small intestine of all cattle. Prohibited cattle materials do not include tallow that contains no more than 0.15 percent hexane-insoluble impurities and tallow derivatives. FDA is taking this action in response to the finding of an adult cow, imported from Canada, that tested positive for BSE in the State of Washington. This action is consistent with the recent interim final rule issued by the U.S. Department of Agriculture (USDA) declaring specified risk materials and the carcasses and parts of nonambulatory disabled cattle to be inedible, unfit for human food, and prohibiting their use as human food and requiring that the entire small intestine be removed and disposed of as inedible. This action will minimize human exposure to materials that scientific studies have demonstrated are highly likely to contain the BSE agent in cattle infected with the disease. Scientists believe that the human disease variant Creutzfeldt-Jakob disease (vCJD) is likely caused by the consumption of products contaminated with the agent that causes BSE. Also in this issue of the **Federal Register**, FDA is proposing to require that manufacturers and processors of human food and cosmetics that are manufactured from, processed with, or otherwise contain material from cattle establish and maintain records sufficient to demonstrate that the food and cosmetics are in compliance with this interim final rule.

DATES: The interim final rule is effective on July 14, 2004. Submit written or electronic comments by October 12, 2004. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 189.5 and 700.27 as of July 14, 2004.

ADDRESSES: You may submit comments, identified by Docket No. 2004N–0081, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: fdadockets@oc.fda.gov. Include Docket No. 2004N–0081 and or RIN number RIN–0910–AF47 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Rebecca Buckner, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1486.

SUPPLEMENTARY INFORMATION:

I. Background

On January 26, 2004, the Department of Health and Human Services announced new safeguards to strengthen existing firewalls against transmission of bovine spongiform encephalopathy (BSE) in the United States. This interim final rule, will protect the food and cosmetic supply from materials that may carry a risk of transmitting BSE. Consumption of products contaminated with agent that causes BSE has been linked to a human disease. The United States is currently protected from the spread of BSE by import controls, increased surveillance for the disease in the cattle population, FDA's 1997 ruminant feed regulation, and the United States Department of Agriculture's (USDA's) ban on specified risk materials and certain other cattle material in human food. This interim final rule complements USDA's ban for FDA-regulated human food and cosmetics.

A. Transmissible Spongiform Encephalopathies

Transmissible spongiform encephalopathies (TSEs) are fatal neurodegenerative disorders, which have been identified in humans and a number of animal species (e.g., cattle, sheep, goats, elk, deer, cats, and mink), but primarily in ruminants (cattle, sheep, elk, deer). TSEs are characterized by a long incubation period, then a shorter course of neurological symptoms, followed by death (Ref. 1). Postmortem histopathology of the brain tissue from humans and animals with TSEs is characterized by a sponge-like appearance of the brain and deposits of abnormal forms of certain cell-associated proteins (normal prion proteins) in the brain. In some TSEs, deposits of abnormal prion proteins are detected in other nervous and non-nervous tissues, such as the spinal cord, peripheral nerves, intestine, spleen, lymph nodes, and bone marrow (Refs. 2 to 6).

TSEs in humans include sporadic CJD, variant Creutzfeldt-Jakob disease (vCJD), Gerstmann-Straussler-Scheinker syndrome, kuru, fatal familial insomnia, and sporadic fatal insomnia (Ref. 7). Nonhuman TSEs include BSE in cattle, scrapie in sheep and goats, transmissible mink encephalopathy (TME) in mink, feline spongiform encephalopathy (FSE) in cats, and chronic wasting disease (CWD) in deer and elk (Ref. 7). Scrapie and CWD occur, and TME has occurred, in the United States. On December 23, 2003, USDA diagnosed BSE in an adult cow

in the United States that had come from Canada.

The pathogenesis of TSEs is poorly understood. Resistance of TSE agents to physical and chemical treatments that would destroy most nucleic acids makes conventional micro-organisms, such as bacteria and viruses, less likely causes (Ref. 8). The prion theory suggests that the infectious agents of TSEs are abnormally folded forms of normal prion proteins, and is the most widely accepted explanation (Ref. 9). Normal prion protein genes are found widely in nature. In mammals, normal prion proteins are primarily expressed in neurons, but also can be found in other tissues in lower concentrations, depending on the mammalian species (Ref. 10). It is not well understood how the abnormal folding of prion proteins occurs, why hosts cannot efficiently dispose of or develop immunity to these proteins, and what factors cause some TSEs.

The current lack of an antemortem diagnostic test for TSEs in either humans or animals limits surveillance for these diseases, studies of disease pathogenesis, and other research efforts. Diagnosis is confirmed by special post-mortem examination of brain tissue by identification of abnormal prion proteins in advanced stages of the disease. At earlier stages of disease development, abnormal prion proteins may not yet be present or are undetectable in brain tissue. Presently, there are no effective treatments for TSEs, and all are invariably fatal (Ref. 1).

B. Bovine Spongiform Encephalopathy

BSE is a TSE of cattle with a long incubation period (2 to 8 years), most likely acquired following consumption of an animal product containing the infectious BSE agent (Refs. 11 and 12). The British Ministry of Agriculture, Fisheries and Food (now known as the Department for Environment, Food, and Rural Affairs) first recognized BSE as a distinct disease in November 1986. The clinical signs of BSE include behavioral, gait, and postural abnormalities. The disease usually presents in cattle observed to have increased apprehension, increased reaction to sound and touch, and a swaying gait. These signs are accompanied by subtle changes in the normal behavior of the cow, such as separation from the herd while at pasture, disorientation, staring, and excessive licking of the nose or flanks. The disease progresses to stumbling and falling, and ends with seizures, coma, and death (Ref. 13).

Epidemiological studies have characterized the outbreak of BSE in the United Kingdom as a prolonged epidemic arising at various locations, with all occurrences due to a common source, and have suggested that feed contaminated by a TSE agent was the cause of the disease outbreak (Ref. 14). The subsequent spread of BSE, however, is associated with the feeding of meat-and-bone-meal from rendered BSE-infected cattle to non-infected cattle (Ref. 14). It appears likely that the BSE agent was transmitted among cattle at an increasing rate by ruminant-to-ruminant feeding until the United Kingdom ban on such practices went into effect in 1988 (Ref. 11). The United Kingdom instituted a ruminant-to-ruminant feed ban to stop the cycle of infection, restrict the geographic spread of the disease, and eliminate potential sources of new infections. Since BSE was first identified in the United Kingdom, approximately 185,000 cattle have been diagnosed with the disease there (Ref. 15). The precautionary slaughter of millions of British cows and increasingly stringent prohibitions on certain animal feeding practices appear to have slowed, but not eradicated, the BSE epidemic in the United Kingdom. In 1992 (the peak year of the epidemic), there were over 35,000 cases of BSE in the United Kingdom; in 2003, there were approximately 458 cases (Ref. 15).

The measures used to control and prevent the spread of BSE in the United Kingdom were too slowly developed or too poorly enforced to prevent the occurrence of BSE in cattle in other countries to which the United Kingdom had shipped BSE-infected cattle or cattle feed (Ref. 11). In addition to the United Kingdom, BSE has been detected in non-imported cattle in Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Israel, Italy, Japan, Liechtenstein, Luxembourg, the Netherlands, Poland, Portugal, the Republic of Ireland, Slovakia, Slovenia, Spain, and Switzerland (Ref. 15). On December 23, 2003, USDA diagnosed a positive case of BSE in an adult Holstein cow, born in Canada, in the State of Washington.

C. Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease

CJD is a sporadic disease of humans that exists throughout the world with an annual incidence of approximately one case per million population (Ref. 9). The highest death rates in the United States and the United Kingdom occur in individuals between the ages of 60 and 70 (Ref. 16). Death generally occurs after less than a year of progressive neurological deterioration (Ref. 9). Early symptoms typically include changes in sleeping and eating patterns, followed by inappropriate behavior and eventual dementia, lack of coordination, and myoclonic spasms. CJD is always fatal (Ref. 16). The cause of sporadic CJD is not fully understood, but genetic susceptibility may play a role (Ref. 9). CJD has been inadvertently transmitted between humans during medical treatment or diagnostic procedures via contaminated neurosurgical instruments, transplants of dura mater and corneas, injection of pituitary extract, and cross-contamination from medical personnel who handled tissues from patients with CJD (Ref. 9).

In April 1996, British scientists reported a previously undetected new variant of CJD (vCJD) in young patients, with symptoms somewhat different from sporadic CJD (Refs. 17 and 18). All cases of vCJD had histopathologic evidence of spongiform changes in the brain, but also showed formation of ''florid'' plaques (a core of amyloid protein with surrounding halos of vacuoles) not typically seen in other forms of CJD (Ref. 9). Clinically, vCJD usually begins with a psychiatric presentation, such as depression, anxiety, nightmares or hallucinations. These symptoms are followed by memory impairment, then dementia in the late stages. The clinical course may last up to 2 years before death occurs (Ref. 19).

Because scientific evidence suggests that the presence and infectivity of abnormal prion proteins in vCJD share some characteristics with those abnormal prion proteins found in cattle with BSE, scientists have concluded that exposure to the BSE agent is the most plausible explanation for the occurrence of vCJD (Refs. 20 to 23). Monkeys (genetically the closest animal model to humans) inoculated with samples of brain from BSE-infected cattle have been found to develop a TSE that is histopathologically similar to vCJD (Ref. 24), as have mice inoculated or fed with BSE-infected tissue (Ref. 25). Studies have shown that abnormal prion proteins from vCJD patients are molecularly similar to abnormal prion proteins from BSE-infected cattle, but different from abnormal prion proteins from patients with CJD (Ref. 19). Although the exact route of exposure is not known, most scientists believe that vCJD in humans is caused by consumption of cattle products contaminated with the agent that causes BSE (Refs. 16, 26, and 27).

Since 1996, approximately 150 probable and confirmed cases of vCJD have been reported in the United Kingdom. In addition, one case of vCJD each has been reported in Ireland and

Canada, both of which are believed to be related to BSE exposure in the United Kingdom. The one reported case of vCJD in the United States is also believed to be related to United Kingdom BSE exposure (Ref. 10). In addition, there have been seven vCJD cases in France and one in Italy (Ref. 10). Because the incubation period for vCJD in humans may range from 5 to 20 years, some epidemiological models have projected that many more (600–3000) cases of vCJD caused by consumption of BSE-contaminated cattle products may occur in the United Kingdom in the future (Ref. 28).

D. BSE Risk Assessments

In 1998, USDA asked the Harvard Center for Risk Analysis (HCRA) and the Center for Computational Epidemiology at Tuskegee University to evaluate United States measures to prevent the spread of BSE to animals and humans if it were to occur in this country. The Harvard-Tuskegee risk assessment (referred to below as the Harvard-Tuskegee study) was published in November 2001, revised in 2003, and determined that the United States was highly resistant to any proliferation of BSE or a similar disease (Ref. 29). The risk assessment model also demonstrated that certain new control measures could reduce the small risk even further.

The Harvard-Tuskegee study involved a probabilistic simulation model to determine the consequences of introducing BSE into the U.S. cattle population. This simulation indicated that, in a hypothetical situation in which 10 infected cattle were imported into the United States, on average only four new cases of BSE would arise, and the disease would be eliminated in 20 years. The Harvard-Tuskegee study determined that these new cases of BSE would most likely arise in the United States from incomplete compliance with FDA's ruminant feed regulation (see III.A of this document), and also concluded that an epidemic of BSE in this country resulting from scrapie, CWD, or another TSE is unlikely.

The Harvard-Tuskegee study estimated the number of cattle infectious doses that might be available for human exposure, but it did not estimate the likelihood of human disease from this exposure because the relationship between the two is not known. According to the study, the estimated total infectivity available for human exposure from the importation of 10 infected cattle is 35 cattle infectious doses over 20 years. The Harvard-Tuskegee study determined that the greatest sources of infectivity to consumers are direct consumption of cattle brain and spinal cord and also meat from advanced meat recovery systems that contains central nervous system tissue. The Harvard-Tuskegee study did not address potential human exposure to the BSE agent through food containing ingredients of cattle origin, such as gelatin, beef stocks, extracts, and flavorings or cosmetics.

The Harvard-Tuskegee study identified three pathways that could lead to cattle or human exposure to the BSE agent: (1) Noncompliance with FDA's ruminant feed regulation prohibiting the use of certain proteins in feed for cattle and other ruminants; (2) rendering of animals that die on the farm, and use (through illegal diversion or cross-contamination) of the rendered product in ruminant feed; and (3) the inclusion of high-risk tissues from cattle, such as brain and spinal cord, in products for human oral consumption. Evaluation of potential risk mitigation measures in the study found that a prohibition against rendering of animals that die on the farm would reduce the potential cases of BSE following hypothetical exposure by 82 percent. In addition, a ban on specified risk materials (SRMs) including brain, spinal cord, and vertebral column from inclusion in human and animal food would reduce potential BSE cases in cattle by 88 percent and potential human exposure to BSE by 95 percent. The Harvard-Tuskegee study also noted the value of ensuring that low-risk cattle tissues are not cross-contaminated with high-risk tissue.

In 2003, after the discovery of a case of BSE in a cow in Canada, the USDA asked HCRA to evaluate the implications of the hypothetical previous introduction of BSE in the United States from Canada. The HCRA model indicated that the potential for spread of BSE among cattle and the potential for human exposure to BSE increase as the time period lengthens between the introduction of infected Canadian cattle and FDA's issuance of the ruminant feed regulation in 1997 (i.e., there is more potential for spread of BSE if the infected cattle were imported from Canada in 1990 versus 1996). In the worst case scenario involving importation of five infected animals from Canada, BSE would be eliminated from the United States with high probability by 2020 (Ref. 30).

E. Specified Risk Materials

1. List of Infective Tissues

Data on the distribution of BSE infectivity in tissues are incomplete, and there are ongoing experiments with cattle to confirm and update earlier data (Refs. 2 to 6 and 31). In a pathogenesis study in which cattle tissues were assayed for infectivity following intracerebral inoculation of tissues from cattle orally exposed to the BSE agent, distal ileum and spinal cord were found to harbor infectivity as early as 6 months post-inoculation for distal ileum and 32 months post-inoculation for spinal cord (Refs. 3 and 4). In one experiment, cattle were experimentally infected with BSE through consumption of the brains of cattle with BSE. Infectivity in the tissues of the cattle consuming the brains was evaluated by mouse bioassay. In the mouse bioassay, infectivity was detected in brain, spinal cord, dorsal root ganglia (clusters of nerve cells attached to the spinal cord that are contained within the bones of the vertebral column), trigeminal ganglia (clusters of nerve cells connected to the brain that lie close to the exterior of the skull), and distal ileum. All of the central nervous system (CNS) tissues were found to be infective in animals 32 to 40 months after exposure to the BSE agent, which in some cases could be months before anticipated onset of clinical signs of illness. This study was done with relatively few animals (n=30), and the experimental conditions do not reflect field conditions of disease transmission. Therefore, a second phase of the experiment was initiated, and will continue for several more years, to determine if any of the tissues that initially did not appear to be infective actually contain low levels of infection. Preliminary results from this study have indicated that tonsil, at 10 months after exposure, carries a low level of infectivity (Ref. 31).

In cattle infected with BSE under field conditions, infectivity has been found in the brain, spinal cord, and retina of the eye in animals with clinical disease (Ref. 31). The Scientific Steering Committee of the European Union (Ref. 27) has reported on the proportion of total infectivity in various tissues. They estimate that, in an animal with clinical disease, approximately 64 percent of the infectivity is in the brain, 26 percent is in the spinal cord, 4 percent is in the dorsal root ganglia, 2.5 percent is in the trigeminal ganglia, and 3 percent is in the distal ileum. The eyes are estimated to contain less than 1 percent of the infectivity.

Based on the information presented previously and consistent with the USDA's regulation (69 FR 1862, January 12, 2004; discussed in section II of this document), we have determined that the tissues with the highest risk of harboring BSE infectivity (the SRMs) are

the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of animals 30 months and older, and tonsil and distal ileum of cattle of all ages. Though the skull and the vertebral column have not been shown to harbor BSE infectivity, they contain tissues that have been shown to be infectious; therefore, we are including the skull and the vertebral column in the list of SRMs. We are not including the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum as SRMs with the rest of the vertebral column, because they do not contain spinal cord or dorsal root ganglia.

2. Animal Age at Which Tissues Become Infective

As discussed in the previous section, most tissues that harbor BSE infectivity have been shown to do so in animals more than 30 months after exposure to the agent. The exceptions are tonsils, which have been shown to harbor infectivity at low levels at 10 months post-exposure, and the distal ileum, which has been shown to harbor infectivity as early as 6 months post-exposure. In a study of the BSE epidemic in the United Kingdom, Dealler and Lacey (Ref. 32) noted that only 29 of 5,470 animals younger than 36 months of age developed BSE, with the peak number of cases occurring between 48 and 60 months of age. At the height of the BSE epidemic in the United Kingdom when thousands of animals were being diagnosed with BSE each year, fewer than 20 animals younger than 30 months were confirmed with the disease (Ref. 33). The youngest animal with a confirmed case of BSE was 20 months old (Ref. 15).

Though animals younger than 30 months can develop BSE, it is a very rare occurrence, based on epidemiological and experimental evidence. Therefore, we have concluded that brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia should be considered SRMs only in cattle 30 months and older.

We are aware that there have been documented cases of BSE in animals younger than 30 months, and that some tissues become infectious before the animal exhibits clinical signs. As mentioned previously, during the height of the BSE epidemic in the United Kingdom, a small number of animals younger than 30 months showed signs of the disease. More recently, Japan has reported cases of BSE in 21- and 23-month-old animals, discovered during testing of animals presented for slaughter. As the science and epidemiology on this issue develop, FDA may find it necessary to modify the age period for SRM removal through future rulemaking.

Based on experimental evidence, we have concluded that the tonsil and distal ileum of the small intestine of all cattle should be considered SRMs.

F. Small Intestine

To ensure effective removal of the distal ileum, USDA is requiring that the entire small intestine be removed and disposed of as inedible product. FDA is also prohibiting the use of the entire small intestine in FDA-regulated food and cosmetics as prohibited cattle material. We are doing so because: (1) It is difficult to distinguish one end of the small intestine from the other once the organ has been removed from the animal, (2) there is no international agreement on how much of the small intestine should be removed to ensure that the distal ileum is separated from the upper part of the intestine, and (3) there is no way for a manufacturer or processor to document that the distal ileum was adequately removed since there is no international consensus on the issue. USDA has solicited comment on whether processors may be able to effectively remove just the distal ileum. FDA requests comment on this issue as it affects FDA's rule.

G. Mechanically Separated (MS)(Beef)

MS(Species) is a standardized food defined by the USDA in 9 CFR 319.5 (see section IV.A of this document for definition of MS(Beef)). The standard does not limit the amount of spinal cord and dorsal root ganglia that can contaminate vertebral column used to produce the product. Consequently, MS(Beef) may contain concentrated amounts of such tissues. Because we have concluded that spinal cord, dorsal root ganglia and vertebral column are all SRMs, we are designating MS(Beef) as a prohibited cattle material.

H. Nonambulatory Disabled Cattle

Experience has shown that nonambulatory disabled cattle (see section IV.A of this document for definition) are the population at greatest risk for harboring BSE. Surveillance data in the European Union in 2002 showed that there were 29 positive/10,000 tests for BSE among healthy-appearing cattle of all ages and 148 positive/10,000 tests for BSE among nonambulatory animals of all ages (Ref. 34). In Switzerland, sampling of particular populations of cattle revealed that BSE-positive animals were 49 to 58 times more likely to be found in the nonambulatory population than in the population selected for passive slaughter surveillance (Ref. 35). The Harvard-Tuskegee study estimated that, following importation of 10 infected cattle, a prohibition against rendering animals that die on the farm (these animals are usually nonambulatory disabled) would decrease the number of new cases of BSE by 82 percent.

Because typical clinical signs of BSE cannot always be observed in nonambulatory disabled cattle, and because evidence has indicated these cattle are more likely to have BSE than apparently healthy cattle, FDA is designating material from nonambulatory disabled cattle as prohibited cattle materials.

I. Cattle Not Inspected and Passed for Human Consumption

For cattle that are not inspected (see section IV.A of this document for definition), there is no information as to their suitability for use in human food and cosmetics in general, and as to their disease status and potential for harboring BSE in particular. In addition, such cattle are likely to have died on the farm or en route to slaughter, and these animals are not eligible for inspection by the USDA. Therefore, these cattle are at higher risk of harboring undetected BSE. For cattle that are inspected but not passed, a regulatory authority (USDA or other) has made a determination that they are not appropriate for use in human food. Such a determination may be based, among other things, on evidence of a neurological disorder associated with a higher risk of BSE. Moreover, material from cattle not inspected or inspected and not passed for human consumption is prohibited from human food by USDA. By requiring that material from cattle for use in FDA-regulated human food and cosmetics be inspected and passed for human consumption, we are minimizing the risk of exposure to the agent that causes BSE, and extending the protections offered by the USDA or the appropriate regulatory authority in other countries to FDA-regulated human food and cosmetics.

J. BSE Testing for Food Safety Purposes

No practical antemortem tests for BSE exist. The currently available postmortem tests, although useful for disease surveillance (i.e., determining the rate of disease in the population of

cattle), are not appropriate as food safety indicators. This is, in part, due to limitations on the existing testing methods, which rely on the use of brain tissue. Experimental evidence demonstrates that certain potentially infective tissues, such as distal ileum and tonsil, are the first tissues to accumulate infectivity in the incubation period, and this is prior to any infectivity being demonstrated in brain tissue (Refs. 3, 36, and 37). Therefore, tests conducted on brain tissue may not reflect accurately the potential infectivity in other tissues that develop infectivity earlier, such as distal lieum. Development of effective food safety indicators will require improved understanding of the pathogenesis of the disease and improved laboratory methods.

K. Dietary Supplements

Some dietary supplements contain cattle-derived materials (e.g., liver powder, brain, ovaries, eye tissue, mammary tissue, adrenal gland, hypothalamus) or substances derived from these tissues. On March 13, 2003 (68 FR 12158), FDA proposed current good manufacturing practice (CGMP) regulations for dietary ingredients and dietary supplements. In the proposal, we recognized that animal-derived ingredients in dietary supplements present important public health and safety issues and that some dietary supplements contain material from cattle that may contain the infective agent that causes BSE. We also stated that, in the absence of broadly applicable or validated diagnostic tests available to manufacturers to identify BSE-infected animals or materials, the agency is considering whether to set forth specific requirements designed to prevent the use of materials derived from certain animals from regions that may present a risk of BSE. Further, in the proposal we sought comment, among other things, on whether we should include in the final rule specific requirements for manufacturing, packing, or holding all animal-derived dietary ingredients, including cattle-derived ingredients, whether or not they originate from areas with BSE. FDA will respond to those comments in a final dietary supplement CGMP rule and consistent with the provisions of this rule, which applies to all human food, including dietary supplements.

L. Cosmetics

Cosmetics may be made from a variety of cattle-derived ingredients. Tallow derivatives, particularly fatty acids and glycerin, are the predominant bovine ingredient used by the cosmetic industry. Additionally, ingredients sometimes include albumin, brain extract, brain lipid, cholesterol, fibronectin, sphingolipids, collagen, keratin, and tallow. Cattle-derived ingredients serve many functions and may be used as skin conditioning agents, emollients, binders, and hair and nail conditioning agents.

There are several routes through which cosmetics contaminated with the agent that causes BSE could transmit disease to humans. Transmission of the BSE agent to humans through intact skin is not likely; however, cosmetics may be ingested or applied to cut or abraded skin or to mucosal tissues, particularly in the eye, which could provide direct routes for infection.

Although injection into the eye does not represent normal human contact with cosmetics, experimental studies in animals may provide relevant information on potential routes of exposure. In mice, intraocular injection of scrapie caused infection along the optic nerve, which eventually spread into non-neural tissue via the lymphatic system (Ref. 38). In addition to intraocular injection, infectivity has been transmitted to animals via the conjunctiva of the eye (mucosal tissue). Scott et al. (Ref. 39) found that scrapie was induced in 42 percent of rodents by dropping a high concentration of infectivity onto the conjunctiva. Klitzman et al. (Ref. 40) suggested that kuru, a human TSE disease found only among the Fore people of New Guinea, might have been transmitted by rubbing infected human brain into eyes or cut skin, while handling and consuming infected brain during funeral rituals.

Cut or abraded skin also has been proposed as a route for contracting TSE diseases. The transmission of kuru through cut skin has been suggested and was mentioned previously (Taylor et al. (Ref. 41) and Ingrosso et al. (Ref. 42)) demonstrated increased transmission of scrapie via oral mucosal tissue. In one study, 100 percent of mice with experimentally damaged oral mucosal tissue developed scrapie through ingestion of infected material, while only 71 percent of mice with intact mucosa developed the disease (Ref. 41). In addition, Pammer et al. (Ref. 43) and Sugaya et al. (Ref. 44) noted that epithelial cells, dendritic cells, and keratinocytes (the primary cell types found in the epidermis) have been found to contain infectious prion protein, indicating that these cells are potential targets for peripheral infection with a TSE disease.

Use of BSE-contaminated cosmetics could provide a means of human infection via several routes discussed previously. Many cosmetics are typically applied in the area of the eye (mascara, eye brow pencil, eyeliner, eye lotion, and eye makeup remover) and almost any cosmetic, including shampoo, can get into the eye via eye rubbing or incorrect application. Any cosmetic product, but particularly shaving creams and gels and lotions, may be applied to cut or abraded skin. Many products may come in contact with mucosal tissue via rubbing. Cosmetics that are ingested, such as lipstick, dentifrices, mouthwash, and breath fresheners, would have the same route of infection as the feeding studies mentioned previously, if the cosmetics were contaminated with the agent that causes BSE.

M. Tallow and Tallow Derivatives

Tallow is an animal-derived hard fat that has been heat processed; most tallow is derived from cattle. Any risk of BSE transmission from tallow is a result of protein that is present as an impurity in the tallow. Taylor et al. (Refs. 45 and 46) found in rendering studies with abnormal prion protein that the prion protein did not preferentially migrate into the fat fraction, but remained with the protein fraction. Therefore, there is no reason to believe that tallow is likely to contain unusually high amounts of prion protein as a constituent of the insoluble impurities fraction that remains in tallow after rendering. Taylor et al. (Refs. 45 and 46) also reported that the various rendering processes used for tallow production in the United Kingdom were sufficient to produce tallow that did not result in infection when injected into the brains of mice, even though the starting material was highly spiked with the scrapie agent. Wilesmith et al. (Ref. 47) noted that the geographical variation in the incidence of BSE in the United Kingdom was not consistent with the use of tallow in cattle feed and concluded that the most likely source of infection in cattle was BSE-contaminated meat and bone meal.

The Office International des Epizooties (OIE), the international animal health standard setting body, categorizes tallow with insoluble impurities of no more than 0.15 percent as protein-free tallow and indicates that tallow that meets this standard can be safely consumed by animals regardless of the starting materials (Ref. 48). There is thought to be a 10- to 10,000-fold increase in the amount of infectious material needed to cause illness in humans as compared with cattle because of the species barrier, though the European Commission's Scientific Steering Committee cautioned that this

range is uncertain and in a unlikely, but worst case scenario, the species barrier may not exist (Ref. 49). FDA's Transmissible Spongiform Encephalopathy Advisory Committee (TSEAC) considered the safety of tallow and tallow derivatives in 1998 (Ref. 50). Members of the Committee indicated that tallow is a food with negligible or no risk of transmitting BSE to humans or animals.

Based on the research and the opinions noted previously, we are permitting tallow to be used in human food and cosmetics if it contains no more than 0.15 percent hexane-insoluble impurities or otherwise complies with these regulations. We believe we are adequately protecting human health by requiring a tallow standard for human food and cosmetics that is as protective as the standard recommended by OIE to prevent BSE in cattle.

Tallow derivatives are produced by subjecting tallow to chemical processes (hydrolysis, trans-esterification, and saponification) that involve high temperature and pressure. The TSEAC considered tallow derivatives in 1998 (Ref. 50) and determined that the rigorous conditions of manufacture are sufficient to further reduce the BSE risk in tallow derivatives. In addition, the OIE also recommends that derivatives of protein-free tallow be freely traded among countries because they pose insignificant BSE risk to animals (Ref. 48). Because we believe that tallow has negligible risk of transmitting BSE, and tallow derivatives undergo additional processing, we do not believe that tallow derivatives pose a risk of transmitting the agent that causes BSE to humans.

II. USDA Interim Final Rule

On January 12, 2004, in response to the diagnosis of BSE in a cow in the United States, USDA published a series of interim final rules including ''Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle'' (69 FR 1862). The rule declares that SRMs are inedible and unfit for food and prohibits their use as human food. The rule designates the following as SRMs: The brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months of age and older, and the tonsils and distal ileum of the small intestine of all cattle. To ensure the distal ileum is completely removed, the entire intestine must be removed and disposed of as inedible. The rule also declares that MS(Beef) is unfit for food and inedible. In addition, the rule requires that all nonambulatory disabled cattle presented for slaughter be condemned and not used in human food. Furthermore, the rule requires that establishments that slaughter cattle or that process the carcasses or parts of carcasses of cattle maintain daily records sufficient to document the implementation and monitoring of procedures for removal, segregation, and disposition of SRMs. Finally, the rule deems all age-associated SRMs (all SRMs except tonsil and distal ileum) to be from animals 30 months or older unless an establishment can demonstrate that the materials are from an animal that was younger than 30 months of age at the time of slaughter.

In this interim final rule, FDA is extending similar protections to FDA-regulated human food and cosmetics. The USDA's interim final rule will reduce but will not, by itself, eliminate the availability and use of prohibited cattle materials in domestic and imported FDA-regulated human food and cosmetics. Domestically, generally human food that contains meat only in a relatively small proportion or that historically has not been considered by consumers to be products of the meat food industry (e.g., soup stock, beef flavors and extracts, gelatin), is not produced under USDA inspection (see definition of ''meat food product'' in 21 U.S.C. 601(j)) and may be physically available for use in FDA-regulated human food and cosmetics. Further, even when excluded from human food produced in USDA-inspected establishments, prohibited cattle materials may leave the establishments for inedible rendering or destruction. These materials, which previously have not been explicitly prohibited in human food and cosmetics by FDA, might then be used in FDA-regulated human food or cosmetics. For example, prohibited cattle materials leaving a USDA-inspected facility might not be denatured sufficiently to preclude their use in FDA-regulated human food and cosmetics.

Under the Food Safety and Inspection Services' (FSIS') rule, SRMs, small intestine from all cattle, and material from nonambulatory disabled cattle must be designated as inedible. However, certain products, such as gelatin and collagen (which are both covered by the provisions of this rule) used in FDA-regulated human food and cosmetics, have traditionally been produced from cattle material deemed inedible by the USDA. Therefore, such a designation by the USDA may not be enough to preclude use of prohibited cattle materials in FDA-regulated products without additional regulation by FDA. Further, some cattle are not slaughtered under continuous USDA inspection (e.g., some are sent directly to rendering). Cattle material from these animals, such as brains or bones which include SRMs, could end up as starting material for human food, such as meat extracts or gelatin, respectively. Furthermore, if prohibited cattle materials were used in FDA-regulated human food or cosmetics, the rule would facilitate FDA's ability to use the enforcement mechanisms of the Federal Food, Drug, and Cosmetic Act (the act) that apply to adulterated products (e.g., seizure) to prevent human exposure to the prohibited cattle materials.

Imported products also may contain the types of materials prohibited by the USDA, but which would not fall within the scope of the USDA's import regulations either because of the nature of the products or their country of origin. Specifically, although both FSIS and Animal and Plant Health Inspection Service (APHIS) impose BSE-related prohibitions, these prohibitions collectively do not cover all FDA-regulated human food and cosmetics. FSIS' restrictions, contained in its interim final rule described earlier in this document, do not apply to importation of dietary supplements, cosmetics, and FDA-regulated human food not considered to be ''meat food products'' under the Federal Meat Inspection Act (21 U.S.C. 601(j)).

APHIS' BSE-related restrictions on imports do not cover gelatin for human use (beyond requiring a permit) or cosmetics, and apply only to a limited number of countries (9 CFR 94.18).

III. FDA Actions on BSE

A. The FDA Ruminant Feed Regulation

In the **Federal Register** of June 5, 1997 (62 FR 30936), FDA published a regulation that prohibits, with some exceptions, the use of protein derived from mammalian tissues in feed for cattle and other ruminant animals (21 CFR 589.2000) (ruminant feed regulation). FDA published the ruminant feed regulation because of findings that ruminants had been fed protein derived from animals in which TSEs were found and that consumption of this protein may cause TSEs in ruminants. The regulation was intended to prevent the establishment and amplification of BSE in the United States and thereby minimize any risk to animals and humans. FDA currently is

considering changes to further strengthen the regulation.

B. FDA Guidance

During the past decade, we have communicated with the public and manufacturers, applicants, importers, and processors of FDA-regulated human food and cosmetics about appropriate steps to increase product safety and minimize the risk of products being contaminated with the BSE agent. Most of our communications have been in the form of letters and guidance to industry and import alerts.

• November 1992—We wrote to manufacturers of dietary supplements to alert them to the developing concern about TSEs in animals and CJD in humans and recommended that they investigate the geographic sources of any bovine and ovine material used in their products. We suggested that manufacturers develop plans to ensure, with a high degree of certainty, that bovine and ovine materials used in their products were not from countries where BSE exists (''BSE countries'' specified by USDA's APHIS in 9 CFR 94.18) or from sheep flocks (foreign or domestic) infected with scrapie.

• August 1994—We published a notice in the **Federal Register** (59 FR 44592, August 29, 1994) entitled ''Bovine-Derived Materials; Agency Letters to Manufacturers of FDA-Regulated Products.'' The notice published the November 1992 letter previously described and, additionally, letters to manufacturers of FDA-regulated drugs, biologics, and medical devices (December 1993), products for animals (August 17, 1994), and manufacturers and importers of dietary supplements and cosmetics (August 17, 1994). The letter to the manufacturers and importers of dietary supplements and cosmetics included our recommendation that firms manufacturing or importing dietary supplements or cosmetics containing specific bovine tissues ensure that the tissues do not come from cattle born, raised, or slaughtered in BSE countries.

• October 1994—We issued Import Alert 17–04, which allowed for the detention, without examination, of bulk shipments of high-risk bovine tissues and tissue-derived ingredients from BSE countries. When FDA issued Import Alert 17–04 in 1994, the list of BSE countries included the United Kingdom, France, Ireland, Oman, Switzerland, and Portugal. We have updated this alert whenever APHIS has revised the list of countries in 9 CFR 94.18.

• May 1996—We sent a letter to manufacturers and importers of dietary supplements and cosmetics stating that FDA strongly believed that manufacturers should take immediate and concrete steps to reduce the potential risk of human exposure to the BSE infectious agent.

• October 1997—We published a notice of availability (62 FR 52345, October 7, 1997) of a guidance for industry entitled ''The Sourcing and Processing of Gelatin to Reduce the Potential Risk Posed by Bovine Spongiform Encephalopathy (BSE) in FDA-Regulated Products for Human Use.'' In the guidance FDA recommends, among other things, that gelatin processors ensure that slaughterhouses that supply cattle bones for gelatin production remove heads, spines, and spinal cords as the first procedure following slaughter.

IV. Description of Interim Final Rule and Legal Authority

A. Definitions

In new §§ 189.5(a) and 700.27(a) (21 CFR 189.5(a) and 21 CFR 700.27(a)) we are defining the following terms for the purposes of this regulation:

1. *Prohibited cattle materials* means specified risk materials, small intestine of all cattle, material from nonambulatory disabled cattle, material from cattle not inspected and passed, or MS(Beef). The phrase ''prohibited cattle materials'' includes all of the individual categories of materials and tissues prohibited by this rulemaking. Prohibited cattle materials do not include tallow that contains no more than 0.15 percent hexane-insoluble impurities and tallow derivatives.

2. *Inspected and passed* means that the product has been inspected and passed for human consumption by the appropriate regulatory authority, and at the time it was inspected and passed, it was found to be not adulterated. This definition is consistent with the USDA's definition in 9 CFR 301.2.

3. *Mechanically Separated (MS)(Beef)* means a meat food product that is finely comminuted, resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses, that meets the specifications contained in 9 CFR 319.5, the USDA regulation that prescribes the standard of identity for MS(Species). This definition of MS(Beef) is consistent with the term as used by the USDA in its recent interim final rule (69 FR 1862) prohibiting its use in human food.

4. *Nonambulatory disabled cattle* means cattle that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions. This definition of nonambulatory disabled cattle is consistent with the definition of nonambulatory disabled livestock in the USDA's interim final rule (69 FR 1862) requiring that nonambulatory disabled cattle be condemned and not used as human food.

5. *Specified risk material (SRM)* means the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older, and the tonsils and distal ileum of the small intestine of all cattle. This definition of SRMs is the same as that used by the USDA in its interim final rule (69 FR 1862) declaring SRMs to be inedible and prohibiting their use in human food.

6. *Tallow* means the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues. Tallow must be free of prohibited cattle material or must contain not more than 0.15% hexane-insoluble impurities determined by the method for ''hexane-insoluble matter,'' pp. 464–465, the Food Chemicals Codex, 5th Ed. (2003), incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or another method equivalent in accuracy, precision, and sensitivity to the method in the Food Chemicals Codex. You may obtain copies of the above-referenced method from the Division of Dairy and Egg Safety (HFS–306), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or you may examine a copy at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, or at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC.

7. *Tallow derivative* means any chemical obtained through initial hydrolysis, saponification, or trans-esterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or trans-esterification may be applied to obtain the desired product.

B. Requirements for Prohibited Cattle Materials

USDA recently declared SRMs and MS(Beef) unfit for food and inedible and prohibited their use in human food. USDA also required that all nonambulatory disabled cattle

presented for slaughter be condemned and not used in human food and that small intestine of all cattle be removed and disposed of as inedible. To ensure that the SRMs, small intestine of all cattle, MS(Beef), and material from nonambulatory disabled animals are not incorporated into FDA-regulated human food and cosmetics, we are similarly prohibiting the use of SRMs, small intestine of all cattle, MS(Beef) and material from nonambulatory disabled cattle in human food and cosmetics. We are also prohibiting material from cattle not inspected and passed. We are defining these five categories of material as prohibited cattle materials.

Scientists believe that the human disease vCJD is likely caused by the consumption of products contaminated with the agent that causes BSE. The relationship between the agent that causes BSE and human cases of vCJD has been described in section I.C of this document. Contamination of products with infected cattle CNS tissue is believed to have led to the development of vCJD in humans (Refs. 16, 26, and 27).

Currently, no practical method for testing products for the agent that causes BSE is available and, therefore, we do not have a means of distinguishing products that contain infectious material from products that do not. Consumers also often are not able to determine which products contain prohibited cattle materials and which products do not. For example, rendered products including brain and spinal cord may become ingredients in soups, broths, meat flavors, extracts, dietary supplements and cosmetics, where their presence may not be indicated as such on the label. Furthermore, consumers have no way to determine whether animal material in a human food or cosmetic was sourced from nonambulatory disabled cattle or from cattle that were not inspected and passed for human consumption.

In addition to being unable to test for infectious material in products, we also do not know the infectious dose for humans. Despite widespread exposure in the United Kingdom to BSE-contaminated meat products, only a very small percentage of the exposed population has been diagnosed with vCJD to date. However, ongoing experiments indicate that the infectious dose for cattle is very low. One gram of affected cattle brain homogenate is sufficient to cause BSE in more than 50 percent of calves exposed by mouth. Five years after oral consumption of lower doses of brain material, 2 of 15 calves fed 0.1 gram had developed BSE, and 1 of 15 fed 0.01 gram had developed the disease. This experiment is ongoing (Ref. 51). There is thought to be a 10- to 10,000-fold increase in the amount of infectious material needed to cause illness in humans, as compared with cattle, because of the species barrier (Ref. 49).

We know that consumption of contaminated material has caused illness in humans, although we do not know the infectious dose, and we cannot test to determine which products contain infectious material. Therefore, we have provided in § 189.5(b) that no human food shall be manufactured from, processed with, or otherwise contain prohibited cattle materials, and in § 700.27(b) that no cosmetic shall be manufactured from, processed with, or otherwise contain, prohibited cattle materials.

FDA is applying these requirements for prohibited cattle materials to all products or ingredients of products manufactured in the U.S. or imported into the U.S. In an advanced notice of proposed rulemaking, entitled ''Federal Measures to Mitigate BSE Risks: Considerations for Further Actions,'' published by APHIS, FSIS, and FDA in this issue of the Federal Register, FSIS is seeking comment on the issue of equivalence and BSE requirements. Likewise, FDA requests comment on standards to apply when determining another country's BSE status, providing an exemption for ''BSE-free'' countries, and how to determine that countries meet any standards that might be developed. FDA intends to work with USDA in developing a harmonized U.S. position on exempting other countries from our respective requirements related to BSE.

C. Tallow and Tallow Derivatives

Tallow is defined in §§ 189.5(a)(6) and 700.27(a)(6) as ''the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues.'' Tallow derivatives are defined in §§ 189.5(a)(7) and 700.27(a)(7) as ''any chemical obtained through initial hydrolysis, saponification, or trans-esterification of tallow or the chemical conversion of material obtained by hydrolysis, saponification, or trans-esterification.'' For the reason described in section I.K of this document, we provide in §§ 189.5(a)(1) and 700.27(a)(1) that tallow with no more than a 0.15 percent hexane-insoluble impurities and tallow derivatives are not considered prohibited cattle materials under this rule. We are requiring in §§ 189.5(a)(6) and 700.27(a)(6) that you measure the hexane-insoluble impurities in tallow by the method for ''hexane-insoluble matter'' described in the 5th edition of the Food Chemicals Codex (Institute of Medicine, National Academies of Science) and incorporated by reference into this rule or by another method that is at least equivalent in accuracy, precision and sensitivity to the method described in the Food Chemicals Codex, 5th edition. Tallow that contains more than 0.15 percent hexane-insoluble impurities may be used if it complies with the requirements for cattle materials in § 189.5 for human food and § 700.27 for cosmetics.

We note that, regardless of its purity level, tallow to be used in human food and cosmetics is subject to the other provisions of the act and is adulterated, for example, if it has been prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth (21 U.S.C. 342(a)(4)).

D. Records Access Requirements

We are requiring in §§ 189.5(c) and 700.27(c) that manufacturers and processors of human food and cosmetics that are manufactured from, processed with, or otherwise contain, material from cattle must make existing records relevant to compliance with this rule available to FDA for inspection and copying. We believe that records documenting the absence of prohibited cattle materials in human food and cosmetics are critical for manufacturers, processors, and FDA to ensure compliance with the prohibitions on the use of prohibited cattle materials in this interim final rule. Once material is removed from cattle, we may not be able to obtain the information necessary to determine whether it is prohibited cattle materials. There is currently no way to test reliably for the presence of the BSE agent or for the presence of prohibited cattle materials. Therefore, manufacturers and processors of human food and cosmetics must depend on records from the suppliers of cattle material to demonstrate that their supplier's cattle material does not contain prohibited cattle materials.

The agency believes that recordkeeping and records access requirements are necessary immediately. The agency, however, recognizes that recordkeeping systems cannot be put into place immediately and, therefore, to include recordkeeping requirements in this interim final rule could result in manufacturers and processors immediately being in violation of the adulteration provisions of the act with respect to human food and cosmetics because of their failure

immediately to establish and maintain the necessary records as of the effective date of this interim final rule. For that reason, we are proposing record establishment and maintenance requirements in a separate rulemaking, rather than including them in this interim final rule. Accordingly, in this issue of the **Federal Register**, we are proposing to require that those manufacturers and processor establish and maintain records to demonstrate compliance with this rule (see ''Recordkeeping Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material from Cattle''). Although the agency is pursuing a separate rulemaking on recordkeeping, we believe that some records may already be maintained that could provide the agency with valuable compliance information before a final rule on recordkeeping is issued as a result of the separate rulemaking. Therefore, we are requiring in this interim final rule that FDA be able to access already existing records that may demonstrate, or be relevant to, compliance with this rule.

E. Scope of the Interim Final Rule

The prohibitions contained in § 189.5 (b) apply to all FDA-regulated human food, except tallow and tallow derivatives. ''Human food'' is ''food'' as that term is defined in section 201(f) of the act (21 U.S.C. 321(f)), except for animal food. Specifically, ''human food'' is: (1) Articles used for food or drink for man, (2) chewing gum, and (3) articles used for components of any such article. ''Human food'' includes, but is not limited to, food additives, including substances that migrate into food from food packaging and other articles that contact food, color additives, dietary supplements and dietary ingredients, and infant formula.

The prohibitions contained in § 700.27 (b) apply to all FDA-regulated cosmetics. ''Cosmetic'' is defined in section 201(i) of the act (21 U.S.C. 321(i)) as

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap.

In 21 CFR 701.20, FDA explains the criteria articles must meet to be considered ''soap'' under section 201(i) of the act.

F. Legal Authority

FDA is issuing these regulations under the adulteration provisions in sections 402(a)(2)(C), (a)(3), (a)(4), (a)(5), 601(c), and under section 701(a) of the act (21 U.S.C. 342(a)(2)(C), (a)(3), (a)(4), (a)(5), 361(c), and 371(a)). Under section 402(a)(3) of the act, a food is deemed adulterated ''if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.'' ''Otherwise unfit for food'' is an independent clause in section 402(a)(3). It does not seem to require that a food be filthy, putrid, or decomposed for it to be ''otherwise unfit for food.'' We conclude that a food can be ''otherwise unfit for food'' based on health risks. We seek comments on this interpretation. Because of the discovery of a BSE positive cow in the United States and the possibility of disease transmission to humans from exposure to material from infected cattle, prohibited cattle materials (SRMs, small intestine of all cattle, MS(Beef), material from nonambulatory disabled cattle, and material from cattle not inspected and passed) may present a risk to human health. Under our interpretation of section 402(a)(3), these materials are unfit for food. Under section 402(a)(4) of the act, a food is adulterated ''if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.'' The failure to ensure that food is prepared, packed, or held under conditions in which prohibited cattle materials do not contaminate the food constitutes an insanitary condition whereby it may have been rendered injurious to health and thus renders the food adulterated under section 402(a)(4). Under section 402(a)(5) of the act, food is deemed adulterated if ''* * * it is, in whole or in part, the product * * * of an animal which has died otherwise than by slaughter.'' Some cattle are not inspected and passed because they have died before slaughter. Material from these cattle that die otherwise than by slaughter is adulterated under section 402(a)(5).

We are also relying on the food additive provision in section 402(a)(2)(C) of the act. Any substance whose intended use results or may reasonably be expected to result in it becoming a component of food is a food additive unless, among other things, it is the subject of a prior sanction (explicit approval for a specific use by USDA or FDA prior to September 6, 1958), or is generally recognized as safe (GRAS). The regulations under 21 CFR 181.1(b) provide that, if scientific data or information shows that the use of a prior-sanctioned ingredient may be injurious to health and, thus, in violation of section 402 of the act, FDA can prohibit use of the ingredient in food. Prior sanctions are described in 21 CFR part 181. FDA is not aware of any prior sanctions that relate to the present use of prohibited cattle materials. However, to the extent any prior sanctions exist for the use of prohibited cattle materials in food, they are hereby revoked.

A determination that a substance added directly or indirectly to a food is GRAS for its intended use is generally based on specific information regarding the composition of the substance, its use, method of preparation, methods for detecting its presence in food, and information about its functionality in food as determined by experts qualified by scientific training and experience to evaluate the safety of such a substance (21 CFR 170.35). A substance added to food becomes GRAS as a result of a common understanding about the substance throughout the scientific community familiar with the safety of such substances. The basis of expert views may be either scientific procedures, or, in the case of a substance used in food prior to January 1, 1958, experience based on common use in food (§ 170.30(a)) (21 CFR 170.30(a)). Substances that are GRAS based on use prior to January 1, 1958, must be currently recognized as safe based on their pre-1958 use (See *United States* v. *Naremco*, 553 F.2d 1138 (8th Cir. 1977); compare *United States* v. *Western Serum*, 666 F.2d 335 (9th Cir. 1982)).

General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation for the ingredient (§ 170.30(b)). (See *United States* v. *Naremco*, 553 F.2d at 1143). A substance is not GRAS if there is a genuine dispute among experts as to its recognition (An Article of Drug * * * Furestrol Vaginal Suppositories, 251 F. Supp 1307 (N.D. Ga. 1968), aff'd, 415 F.2d 390 (5th Cir. 1969)). It is not enough, in attempting to establish that a substance is GRAS, to establish that there is an absence of scientific studies that demonstrate the substance to be unsafe; there must be studies that show the substance to be safe (*United States* v. *An Article of Food* * * * *CoCo Rico*, 752 F.2d 11 (1st Cir. 1985)). Conversely, a substance may be ineligible for GRAS status if studies show that the substance is, or may be, unsafe, or if there is a conflict in studies.

Expert opinion that prohibited cattle materials are GRAS would need to be supported by scientific literature, and

other sources of data and information, establishing that there is a reasonable certainty of no harm from the material under the intended conditions of use. Expert opinion would need to address topics such as whether BSE infectivity can be detected and whether it is reasonably certain that the BSE agent will not be transmitted through prohibited cattle materials. The burden of establishing that a substance is GRAS is on the proponent of the substance. (See *CoCo Rico*, *supra*).

For the reasons discussed in section I of this document, the agency is declaring that prohibited cattle materials are not GRAS by qualified experts for use in human food and, therefore, are food additives. Section 402(a)(2)(C) of the act deems food adulterated ''if it is, or it bears or contains, any food additive which is unsafe within the meaning of section 409 * * *.'' Under section 409(a) (21 U.S.C. 348(a)), a food additive is unsafe unless a food additive regulation or an exemption is in effect with respect to its use or its intended use. As a result, because neither a food additive regulation, nor an exemption, is in effect for prohibited cattle materials intended for use in human food, such materials, with the exception of dietary ingredients in dietary supplements, are adulterated under section 402(a)(2)(C) of the act, and their presence in food renders the food adulterated.

Dietary supplements are considered food under the act and are included in this rule. However, the food additive definition in section 201(s)(6) of the act exempts from regulation as a food additive ''an ingredient described in paragraph (ff) in, or intended for use in, a dietary supplement.'' An ingredient described in section 201(ff) is a dietary ingredient. Therefore, a dietary ingredient, within the meaning of section 201(ff), is not subject to regulation as a food additive. FDA notes that, under this rule, ingredients containing prohibited cattle materials, and dietary supplements containing such ingredients, would be adulterated food under section 402(a)(3) and (a)(4) of the act, as unfit for food and as food prepared, packed, or held under insanitary conditions whereby it may have been rendered injurious to health. Such dietary ingredients would also be adulterated under section 402(a)(5) of the act if sourced from an animal that died other than by slaughter.

Under section 601(c) of the act, a cosmetic is adulterated ''if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.'' The failure to ensure that a cosmetic is prepared, packed, or held under conditions in which prohibited cattle materials do not contaminate the cosmetic constitutes an insanitary condition whereby it may have been rendered injurious to health and, thus, renders the cosmetic adulterated under section 601(c).

Under section 701(a) of the act, FDA is authorized to issue regulations for the act's efficient enforcement. A regulation that requires measures to prevent human food from being unfit for food, from being or bearing an unsafe food additive, from being the product of an animal that died otherwise than by slaughter, and to prevent human food and cosmetics from being held under insanitary conditions, allows for efficient enforcement of the act. The regulations require that manufacturers and processors of human food and cosmetics that are manufactured from, processed with, or otherwise contain, material from cattle make existing records available to FDA for inspection and copying. Once material is removed from cattle, we may not be able to obtain the information necessary to determine whether it is prohibited cattle material. For example, we would not know from examination of a spinal cord whether the source animal was over 30 months of age at the time of slaughter or whether it was inspected and passed. Therefore, the records access requirement is necessary for the efficient enforcement of this rule. Failure to comply with this rule's records access requirement renders the affected food and cosmetics adulterated under sections 402(a)(4) and 601(a) respectively.

V. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

We are issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to public interest, the agency may issue a rule without providing notice and public comment. FDA has determined that there is good cause under 5 U.S.C. 553(b)(3)(B) and 21 CFR 10.40(d) because the discovery of BSE in a cow in the United States requires regulations in place immediately to impose restrictions on the use of cattle material in human food and cosmetics to further reduce the possibility of transmission of vCJD. Further, under 5 U.S.C. 553(d)(3), we find good cause to make the rule effective immediately. It is imperative that we act quickly to impose these restrictions on the use of cattle material in human food and cosmetics to further reduce the possibility of transmission of vCJD and ensure that there is consistent protection of the U.S. food supply by imposing upon FDA-regulated products the same restrictions related to BSE imposed upon USDA-regulated products.

FDA invites public comment on this interim final rule. The comment period on this interim final rule will be 90 days. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this interim final rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

This interim final rule applies to human food and cosmetics manufactured from, processed with, or that otherwise contain, material from cattle slaughtered on or after its effective date. Human food and cosmetics under the act include their components and the rule applies to these components. FDA realizes that it may be difficult, in certain instances, for manufacturers and processors to comply immediately with all of the provisions of this interim final rule. We may consider this in enforcing the rule.

FDA will address comments received and confirm or amend this interim final rule in a final rule.

VI. Analysis of Economic Impacts of the Interim Final Rule Use of Materials Derived From Cattle in Food and Cosmetics

A. Interim Final Regulatory Impact Analysis

FDA has examined the economic implications of this interim final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages;

distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this interim final rule is not an economically significant regulatory action.

1. Need for Regulation

The FSIS' interim final rule requires that specified risk materials, small intestine from all cattle, tissue from nonambulatory disabled cattle, and MS(Beef) not be used for human food. Specified risk materials include the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse process of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older, and the tonsils and distal ileum of the small intestine of all cattle. The FSIS interim final rule requires that all of the prohibited materials be destroyed or sent to inedible rendering.

FDA, in response to the finding of an adult cow that tested positive for BSE in the State of Washington and to be consistent with the USDA in regulating cattle products that could potentially transmit BSE, is issuing this interim final rule for FDA-regulated food and cosmetics that may contain cattle material of concern. Specifically, this interim final rule regulates cattle materials that may be used in human foods (e.g., dietary supplements, food additives, color additives, infant formula) and cosmetics.

This interim final rule will not affect the incidence of BSE in cattle, which is addressed in other FDA regulations. This interim final rule will serve as a safeguard to reduce human exposure to the agent that causes BSE that may be present in cattle-derived products from domestic and imported sources. If BSE-infected cattle or cattle material is prevented from use in human food by the requirements in this rule (e.g., the requirement that cattle materials be sourced from inspected and passed animals) this interim final rule will reduce human risk by reducing human exposure to infectious materials (i.e., prohibited cattle materials).

2. Interim Final Rule Coverage

This interim final rule prohibits the use of ''prohibited cattle materials.'' These include SRMs (brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse process of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older (including rendering of these materials), and the tonsils and distal ileum of the small intestine of all cattle), small intestine of all cattle, tissue from nonambulatory disabled cattle, tissue from cattle not inspected and passed for human consumption, and MS(Beef) in all FDA-regulated human food and cosmetics.

Under this interim final rule, tallow with no more than 0.15 percent hexane-insoluble impurities or that meets the requirements of § 189.5(b) (human food) or § 700.27(b) (cosmetics) may be used in food or cosmetics. In addition, tallow derivatives are exempt from the requirements of this rulemaking. The provisions for tallow and tallow derivatives in this interim final rule are in accordance with the best guidance from the OIE and FDA's TSEAC. The interim final rule provides in §§ 189.5(c) and 700.27(c) that manufacturers and processors of human food or cosmetics that are manufactured from, processed with, or otherwise contains cattle material must make records relevant to compliance with this rule available to FDA for inspection and copying.

3. Regulatory Options Considered

In response to the concern over BSE in food and cosmetics, FDA considered three regulatory options:

- No new regulation (baseline).
- Prohibit the use of prohibited cattle materials in human food and cosmetics and require access to existing records relevant to determine compliance.
- Prohibit the use of prohibited cattle materials in human food and cosmetics and require establishment, maintenance, and access to records demonstrating that prohibited cattle materials are not used in human food and cosmetics.

*Option 1: No new regulation.*We use this option as the baseline. By definition, no costs and benefits are associated with the baseline.

Option 2: Prohibit the use of prohibited cattle materials in human food and cosmetics and require access to existing records relevant to determining compliance.

This option would prohibit the use of prohibited cattle materials in all FDA-regulated food, including dietary supplements, and cosmetics, and would require that manufacturers and processors make existing records related to compliance with the rule available to FDA for inspection and copying.

The prohibition would cover the same materials prohibited by the FSIS interim final rule and also materials from cattle that are not inspected and passed for human consumption. Because SRMs, small intestine of all cattle, nonambulatory disabled cattle and MS(Beef) are subject to the USDA's disposition requirements (e.g., destruction or rendering for purposes other than human food), we assume that generally these materials are not likely to be widely available for use in the manufacture of FDA-regulated human food and cosmetics. The manufacturers and processors of products currently using materials that are considered SRMs (e.g., the brain, skull, spinal cord) would presumably be able to continue to use these ingredients, but exclusively from cattle younger than 30 months of age. The manufacturers of FDA-regulated human food products that use rendered material would continue to use rendered material that is the product of edible rendering (e.g., edible tallow). The manufacturers and processors of products using the tonsils and the small intestine of all cattle, material from nonambulatory disabled cattle, material from cattle not inspected and passed for human consumption, and MS(Beef) would need to find substitutes for these ingredients. We assume that the recent USDA rulemaking has already led many of these manufacturers to search for alternative ingredients.

We do not have adequate information to quantify the cost of ingredient switching for human foods and request data on this subject. To the extent that this option leads to increased use of alternative ingredients, exposure to prohibited cattle materials will be reduced. Without a complete records requirement, however, the incentives to ensure that alternative ingredients are used are reduced. Access to existing records, as required by this option, would not increase the costs of this interim final rule, but would be beneficial in ensuring that acceptable cattle material is used in the manufacture of food and cosmetics.

Manufacturers of cosmetics that currently use inedible rendered materials, including tallow containing more than 0.15 percent hexane-insoluble impurities, would have to find alternative ingredients. We assume that they would switch to edible cattle rendered material, or perhaps non-cattle inedible rendering, to continue production. While we do not have

specific price information for all cattle material, edible or inedible, used in cosmetics, we were able to determine that prime edible tallow from cattle is 4 cents more per pound than inedible tallow from cattle ($0.1575 per lb. vs. $0.1975 per lb.) (Ref. 52). In comparison, the alternative fats white grease and yellow grease are less expensive than even inedible tallow ($0.01 to $0.02 per lb. less), while lard is more expensive than edible tallow ($0.06 more per lb.).

Because edible cattle material is more expensive than inedible material, the costs for inputs into cosmetic production would increase for those producers that currently use inedible cattle material and must switch to edible cattle material. FDA does not have information on the specific number of ingredient substitutions that will be made in cosmetics production as a result of this interim final rule. We assume that the increased costs of edible cattle material as an ingredient in cosmetic production would, at least in part, be passed along to cosmetics' consumers in the form of higher prices for finished products. It is unlikely that the price increases for the cosmetic inputs or for the finished products would be large enough to substantially decrease the amounts of the affected products sold. FDA requests comments on this assumption.

Even though FDA does not have a specific list of cosmetics that currently use inedible rendering as an input in production, we do have information from the year 2000 on the U.S. consumption of inedible tallow and greases used in soap, lubricants, and fatty acids (Ref. 53). We expect that these three ingredients represent a good portion of the inedible rendering that is used to produce cosmetics.

Tallow is the generally accepted term for the rendered fat from ruminant carcasses, while grease is a more generic term that could be used to describe rendered pork fat (white grease), used restaurant grease (yellow grease), or lower quality tallow (also called yellow grease). To estimate the portion of inedible tallow from cattle in the inedible tallow and greases category, we looked at the percentage of total production of inedible tallow and greases that represented inedible tallow for the year 2000, and found that inedible tallow represented 54 percent of the mixture.

Table 1 of this document shows the usage of inedible tallow and greases by category (soap, lubricant, or fatty acid), the consumption that represents the cattle portion of the material (inedible tallow) and the calculated additional costs—about $18 million—of these potential cosmetic inputs. The cost of cosmetic ingredient switching shown in table 1 represents an upper bound estimate of costs. Some cosmetic products likely use tallow derivatives, exempt from this rulemaking, or already use cattle-derived ingredients that are considered edible. Because we do not have precise information on how many cosmetic products use tallow with more than the maximum level of insoluble impurities or other inedible cattle material as ingredients, we estimate the costs of cosmetic ingredient switching to be between $0 and $18 million.

TABLE 1.—INEDIBLE TALLOW USAGE & PRICE PREMIUM FOR EDIBLE TALLOW

U.S. Consumption of Inedible Tallow & Greases, 2000	lbs	Consumption in lbs That represents Tallow Only	Price Premium for Edible Tallow = $0.04/lb
Total inedible Tallow and greases usage	3,654,200,000		
- in soap	147,620,000	79,714,800	$3,188,592
- in lubricants	102,300,000	55,242,000	$2,209,680
- in fatty acids	583,000,000	314,820,000	$12,592,800
Total increased cost of cosmetic inputs			$17,991,072

Regulatory option 2 would decrease the likelihood of human exposure to BSE in several ways. First, by making clear that prohibited cattle material cannot be used in FDA-regulated human food and cosmetics, option 2 would create an additional regulatory barrier, beyond existing regulations, between consumers and food and cosmetics potentially contaminated with BSE. Second, by deeming human food and cosmetics manufactured from, processed with, or otherwise containing, prohibited cattle materials to be adulterated, option 2 would clarify FDA's ability to prohibit importation of prohibited cattle materials. Imported products, such as gelatin, beef extracts, and dietary supplements, may contain the types of materials prohibited by the USDA, but may not fall under the scope of the USDA's import restrictions.

The benefits of this interim final rule are the value of the public health benefits. The public health benefit is the reduction in the risk of the human illness associated with consumption of the agent that causes BSE.

If we define the baseline risk as the expected annual number of cases of vCJD per year, then the annual benefits of prohibiting prohibited cattle materials for use in foods and cosmetics would be:

(baseline annual cases of vCJD - annual cases of vCJD under FDA interim final rule) x (value of preventing a case of vCJD).

An alternative way to characterize benefits is:

Reduction in annual cases in vCJD under FDA interim final rule x (value of preventing a case of vCJD)

We do not know the baseline expected annual number of cases, but based on the epidemiology of vCJD in United Kingdom we anticipate much less than one case of vCJD per year in the United States. Because the interim final rule will reduce rather than eliminate risk of exposure to BSE infectious materials, the reduction in the number of cases will be some fraction of the expected number. The value of preventing a case of vCJD is the value of a statistical life plus the value of preventing a year-long or longer illness that precedes certain death for victims of vCJD. In a recent rulemaking regarding labeling of trans fatty acids (68 FR 41433, July 11, 2003), we used a range of $5 to $6.5 million for the value of a statistical life. The value of preventing a vCJD case would be even higher because of the significant medical costs associated with the illness (Ref. 54). We estimate that the value of preventing a single case of vCJD ranges

from $5.7 to $7.1 million. This estimate includes direct medical costs, reduced ability of the ill person to function at home and at work, and the cost of premature death.

As discussed earlier in this document, the Harvard-Tuskegee study has stated that a ban on specified risk materials, including cattle brains, spinal cord and vertebral column, from inclusion in human and animal food would reduce the very few potential BSE cases in cattle by a further 88 percent and potential human exposure to infectivity in meat and meat products by a further 95 percent. This interim final rule, in conjunction with the USDA's interim final rule, will help achieve this reduction in potential human exposure. This interim final rule will also reduce potential human exposure to BSE infection in human food not covered by the Harvard-Tuskegee study. For example, this interim final rule will help ensure that a domestically produced or foreign-produced dietary supplement or ingredient contains cattle material (e.g., brain) from animals of an appropriate age.

Summary of Costs and Benefits of Interim Final Rule

The social cost of this interim final rule, which we approximate by multiplying the difference in ingredient prices by the pre-regulation quantity of ingredients, will be borne by producers and consumers of affected products. If demand is inelastic compared with supply, consumers will bear most of the social cost. If supply is inelastic compared with demand, producers will bear most of the social cost. The ready availability of alternatives for the prohibited ingredients, and the small number of products currently using them, implies that the social costs of this rule will likely be small for foods. The social costs for cosmetics will be greater. We estimate that the cost of ingredient switching for cosmetics will range from a lower bound of $0 to an upper bound of $18 million. The benefit of this interim final rule is that its requirements will—by reducing exposure to potentially infective materials—provide a safeguard against a case of vCJD occurring in humans if cattle infected with BSE enter the human food or cosmetic supply.

Option 3: Prohibit the use of prohibited cattle materials in human food and cosmetics and require establishment, maintenance, and access to records demonstrating that prohibited cattle materials are not used in human food and cosmetics.

Option 3, like option 2, prohibits the use of prohibited cattle materials in human food, including dietary supplements, and cosmetics. We explained in the discussion of option 2 that the USDA's prohibitions are not sufficient, by themselves, to ensure that prohibited cattle materials are not used in FDA-regulated food and cosmetics. Therefore, FDA must be able to determine whether prohibited cattle materials are used in the human food and cosmetics it regulates. Option 3 requires manufacturers and processors of FDA-regulated human food and cosmetics manufactured from, processed with, or otherwise containing cattle material to establish, maintain, and provide access to records documenting that prohibited cattle materials are not used in their products. Under this option, records would not be not required for human food or cosmetics containing tallow derivatives because tallow derivatives are not prohibited cattle material. The marginal difference between options 2 and 3 presented in this interim final rule is the requirements to establish and maintain records for cattle-derived materials in Option 3. The requirement of records for cattle-derived materials is the subject of an FDA proposed rulemaking published elsewhere in this issue of the **Federal Register**. Thus, Option 3 of this interim final rule represents the impacts of the requirements for the interim final rule and for the proposed recordkeeping requirement. The impact of only the recordkeeping requirement for cattle-derived materials used in food and cosmetics is fully explained elsewhere in this issue of the **Federal Register**.

Without these records, FDA may not be able to determine the age of cattle material, such as brain or spinal cord, once it is separated from the source animal. In addition, without records, the agency may not be able to determine the inspectional status of the source animals. This regulatory option would require that the manufacturer or processor retain records for 2 years after using cattle material in food or cosmetics. Records must be kept at the manufacturing or processing establishment or another reasonably accessible location.

The costs of option 3 are the $0 to $18 million ingredient switching costs calculated for option 2, plus the recordkeeping costs. We assume that some records must be created for each shipment of materials from a slaughterhouse or rendering facility to an FDA-regulated facility. We also assume that all supporting information is known by the slaughter or rendering facility. The USDA's interim final rule requires that establishments that slaughter cattle or that process the carcasses or parts of carcasses of cattle maintain daily records sufficient to document the implementation and monitoring of procedures for removal, segregation, and disposition of SRMs.

Although most FDA-regulated human food does not use a large quantity of cattle material, certain products contain substantial amounts. Some fats and oils (e.g., oleo margarine and shortening) use edible tallow and its derivatives; ice cream, yogurt, candies, flavorings, marshmallows, and mayonnaise use gelatin; and some soups, mixed entrees, cake mixes and pasta use a range of cattle material (Refs. 55 and 56).

Using establishment data from the FDA Small Business Model (which includes information on all establishments in a manufacturing sector regardless of size) (Ref. 57), FDA estimated that 132 establishments produce fats and oils, 181 establishments produce spreads, 127 establishments produce flavoring extracts, 40 establishments produce canned soups and stews, 625 establishments produce non-chocolate candy, 88 establishments produce yogurt, and 451 establishments produce ice cream. FDA cannot verify that all of these establishments actually use cattle materials that fall under the jurisdiction of this interim final rule; many may not. It is likely that all of the 132 establishments that produce fats and oils currently use tallow derivatives, not tallow, so FDA assumes that no records would be required to be kept by this establishment group. We assume that only 25 percent of the establishments from the remaining production sectors listed previously actually produce human food that is manufactured from, processed with, or otherwise contains material from cattle and therefore would be required to keep records under this option. We include only 25 percent of the establishments in our estimates because most of the manufacturers likely do not use cattle-derived ingredients in their products. FDA requests comments on this assumption.

FDA research shows that 25 establishments with U.S. addresses supply cattle-derived ingredients that are used in cosmetics (Ref. 58). These cattle-derived ingredients include albumin, brain extract, brain lipids, cholesterol and cholesterol compounds, fibronectin, sphingolipids, spleen extract, tallow, and keratin and keratin compounds. FDA research also shows that 22 foreign establishments may export these cattle-derived ingredients to U.S. cosmetic manufacturers. The U.S. cosmetic manufacturers would be required to obtain records from the foreign establishments under this

option. We therefore include these foreign establishments when we estimate the recordkeeping costs of the regulatory options in the interim final rule. Imported cosmetic products represent about 10 to 20 percent of the cosmetics products on U.S. store shelves (Refs. 59, 60, and 61). The burden of this interim final rule to foreign cosmetics input suppliers and manufacturers will be less than the burden on domestic cosmetics producers. The burden will be less for foreign cosmetics manufacturers because Europe currently imposes some requirements similar to this rule.

FDA does not have enough information on the types of cattle material used by the 47 domestic and foreign cosmetics establishments to know how often tallow derivatives (exempt from the definition of prohibited cattle materials and, therefore, exempt from the requirements under this option) are the only cattle-derived ingredient used in these products. We estimate that 75 percent (or 35) of the 47 cosmetics establishments would have to keep records for their cattle-derived ingredients. We estimate that only 75 percent will keep records because many cosmetics use tallow derivatives as their only cattle-derived material and such materials are exempt from this rulemaking. FDA requests comments on this assumption.

From FDA's dietary supplement database (Ref. 62), we are able to tell that there are 162 dietary supplement brand names that use cattle material as ingredients in their products. We assume that each brand name represents a facility that produces multiple dietary supplement products containing cattle-derived ingredients; therefore we assess recordkeeping costs for all 162 brand names. We do not have information to determine if any of the dietary supplement manufacturers use tallow derivatives (exempt from all requirements under this option) as their only cattle-derived ingredient.

Recordkeeping Costs

The USDA's BSE interim final rule requires those establishments that slaughter cattle or that process the carcasses or parts of carcasses of cattle maintain daily records sufficient to document the implementation and monitoring of procedures for removal, segregation, and disposition of SRMs. This USDA requirement would reduce the startup costs of the recordkeeping required under this option.

Recordkeeping costs include one-time costs and recurring costs. One-time costs include the costs of designing records and training personnel in the maintenance of the records. The recurring costs are the costs of ensuring that appropriate records document the absence of prohibited cattle risk materials in human food and cosmetics. The costs of retaining records and planning for an FDA request for records access are estimated to be zero. We estimate these costs to be zero becasue current business practices already dictate that records for a second year is assumed to be greater than the marginal cost of doing so. Although there is no specific time period for providing records when requested, FDA notes that records requestes costs are zero when FDA gives the records submitter 24 hours to comply. These cost estimates are consistent with cost estimates used in FDA's proposed recordkeeping requirements in ''Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002'' (68 FR 25188, May 9, 2003).

We assume that the one-time training burden incurred for each facility is the equivalent of 1 month's on-the-job training or approximately 1/3 of an hour. This time includes both the training required for personnel to learn how to verify that shipments contain the appropriate records, and also the training required for personnel to learn how to file and maintain those records. Given current business practices, we know personnel are familiar with recordkeeping. Therefore, the requirement to maintain additional records is expected to be learned quickly. This training burden for recordkeeping is consistent with the recordkeeping training burden in the analysis for the proposed recordkeeping rule (68 FR 25188; May 9, 2003) and the records maintenance burden used in the analysis of the Juice HACCP rule (66 FR 6138; January 19, 2001). Consistent with the analysis conducted for the proposed recordkeeping rule (68 FR 25188; May 9, 2003), FDA assumes an hourly cost of an administrative worker, $25.10 per hour, which has been doubled from $12.55 wage per hour to include overhead costs. This cost, $25.10 per hour, applies to all labor costs.

We use the FDA Labeling Cost Model to estimate the one-time records design costs per facility of $1,190 per stockkeeping unit (SKU) (Ref. 63). It is likely that facilities using cattle-derived ingredients, whether the ingredients are for human food or cosmetics, will take advantage of their economies of scope and produce more than one product with these ingredients. It is probable that each establishment has several SKUs associated with products containing cattle-derived ingredients that will now require recordkeeping. To account for additional products and SKUs we multiply the record design costs per facility by 1.5 for a total design cost per facility of $1,785 ($1,095 in labor costs and $690 in capital costs).

We multiplied the cost per product per SKU by 1.5 to account for the additional records design required for the additional SKUs. The record design cost for the first affected product or SKU will be more expensive than the marginal cost of adding records for additional SKUs. This marginal cost of record design for additional SKUs could be negligible or it could come close to doubling the costs; we therefore pick 1.5, the midpoint of one and two, to be the cost multiplier.

Consistent with the analysis conducted for the proposed recordkeeping rule implementing the 2002 Bioterrorism Act, this record design cost is assumed to be shared between two facilities—the upstream facility and the downstream facility—as both will need to be involved in record production that meets the needs of both the supplier and customer for the cattle-derived ingredient.

Unlike the Bioterrism Act proposed recordkeeping rule, we do not have direct information on all the facilities covered; we do not have data on the number of slaughter plants or renderers that supply cattle material for human food and cosmetic manufacturers and processors under FDA jurisdiction. FDA does, however, have some information on the number and type of downstream facilities that receive this material. Using information on the number of human food and cosmetic manufacturers that may use cattle-derived ingredients subject to this interim final rule, we can account for the total shared records costs by assuming that each food manufacturer or processor facility listed in the table below procures ingredients from one upstream slaughter plant or renderer. We assume each manufacturing facility maintains an exclusive contractual relationship with one ingredient supplier for calculation purposes. Even if multiple input suppliers are utilized by the manufacturing facility, the marginal record set-up costs would decrease for additional suppliers. Once the facility has learned what records are required, it is less costly to keep records on additional input suppliers. FDA requests comment on this assumption.

Information on food producing facilities in Table 2 represent U.S. facilities; dietary supplement numbers account for both domestic and foreign facilities; cosmetics numbers account

for both domestic and foreign input suppliers.

TABLE 2.—FIRST-YEAR RECORDS COSTS

Type of Product Using Cattle Material	Number of Facilities Estimated to Use Cattle Materials	Costs Per Facility for Designing Records	Costs Per Facility for Training (1/3 hour * $25.10 per hour)	Total Setup Costs
Canned soups and stews	10	$1,785	$8.37	$17,934
Fats and oils	0			
Flavoring extracts	32	$1,785	$8.37	$57,388
Spreads	45	$1,785	$8.37	$80,702
Candy	156	$1,785	$8.37	$279,766
Yogurt	22	$1,785	$8.37	$39,454
Ice cream	113	$1,785	$8.37	$202,651
Dietary supplements	162	$1,785	$8.37	$290,526
Cosmetics	35	$1,785	$8.37	$62,768
Color additives	0			
Total	575	$1,785	$8.37	$1,031,189

The recurring recordkeeping cost is the cost of ensuring that appropriate records document the absence of prohibited cattle materials in human food and cosmetics.

The framework for estimating the amount of time required for FDA-regulated facilities to ensure that the records for each shipment of materials is based on the regulatory impact analysis of the proposed recordkeeping requirements in ''Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' In that analysis we estimated that 30 minutes per week would be required to ensure that records on each shipment to and from a facility contain adequate information of the contents of the package, as well as adequate information on the transporter, supplier, and receiver.

The recordkeeping requirements of this regulatory option will cover only a small fraction of all ingredients used in the human food and cosmetic manufacturing processes and only require that records of cattle-derived ingredient origin from the input supplier be verified and maintained by a food or cosmetic manufacturer or processor. Because this recordkeeping requirement is less complex than the recordkeeping requirements under the Bioterrorism Act and affects fewer ingredients, we estimate the per facility burden to be about one-half of the burden estimated for the Bioterrorism Act recordkeeping rule (68 FR 25188, May 9, 2003): 15 minutes per week, or 13 hours per year. FDA assumes that this recordkeeping burden will be shared between two entities (i.e., the slaughter plant and the manufacturer or processor of finished products containing cattle-derived ingredients).

Table 3 shows the recurring recordkeeping costs for human food and cosmetic manufacturers and processors. As stated earlier, information on food producing facilities in Table 3 represents U.S. facilities; dietary supplement numbers account for both domestic and foreign facilities; cosmetics numbers account for both domestic and foreign input suppliers.

TABLE 3.—RECURRING ANNUAL RECORDS COSTS

Type of Product (From Raw or Rendered Material That Needs Accompanying Documentation)	Number of Facilities	Annual Costs Per Facility of Ensuring That Appropriate Records Accompany Each Shipment Received (13 hours * $25.10/hour)	Total Recurring Annual Costs
Canned soups and stews	10	$326.30	$3,263
Fats and oils	0		
Flavoring extracts	32	$326.30	$10,442
Spreads	45	$326.30	$14,684
Candy	156	$326.30	$50,903
Yogurt	22	$326.30	$7,179

TABLE 3.—RECURRING ANNUAL RECORDS COSTS—Continued

Type of Product (From Raw or Rendered Material That Needs Accompanying Documentation)	Number of Facilities	Annual Costs Per Facility of Ensuring That Appropriate Records Accompany Each Shipment Received (13 hours * $25.10/hour)	Total Recurring Annual Costs
Ice Cream	113	$326.30	$36,872
Dietary supplements	162	$326.30	$52,861
Cosmetics	35	$326.30	$11,421
Color additives	0		
Total	575	$326.30	$187,625

The benefits of this option are the same as the benefits of option 2—the value of the public health benefits. The public health benefit is the reduction in the risk of the human illness associated with consumption of the agent that causes BSE. With this option, however, requiring the establishment and maintenance of records provides an additional safeguard to prevent exposure to potentially infected materials.

B. Regulatory Flexibility Analysis

FDA has examined the economic implications of this interim final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA does not believe that this interim final rule will have a significant economic impact on a substantial number of small entities.

For this interim final rule, the only cost is for those human food and cosmetic facilities that will need to switch to alternative ingredients. While food facilities may incur search costs as well as higher ingredient costs, the ready availability of alternatives for prohibited ingredients, and the small number of products currently using them, implies that these costs will be negligible for foods.

Cosmetic facilities are more likely than food facilities to experience substantial ingredient switching costs as a result of this interim final rule. As shown previously, we estimate that 35 cosmetics establishments will be affected by this interim final rule. If ingredient switching costs are closer to FDA's estimated upper bound of $18 million than to the lower bound of 0, the average cost per establishment will be about $500,000. We do not know if any of the affected establishments are small businesses. This cost would, however, be a significant economic impact for small cosmetics businesses. If the actual costs are closer to the lower bound, then the economic impact will not be significant.

Because switching ingredients is the source of the reduction in exposure to potentially infective materials, it is necessary to apply the rule's provisions to all establishments equally. We have, however, allowed small businesses some flexibility by not requiring the establishment and maintenance of records in this interim final rule. In a companion rulemaking, we propose record establishment and maintenance requirements and ask for comments on their effect on small businesses.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rulemaking if the rule would include a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' The current inflation-adjusted statutory threshold is $115 million. FDA has determined that this interim final rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

D. SBREFA Major Rule

The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million or more; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, the Office of Management and Budget (OMB) has determined that this interim final rule is not a major rule for the purpose of congressional review.

VII. Paperwork Reduction Act Analysis

This interim final rule does not contain information collection provisions that are subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VIII. Environmental Impact Analysis

FDA has carefully considered the potential environmental effects of this interim final rule and of three possible alternative actions. In doing so, the agency focused on the environmental impacts of its action as a result of disposal of unused cattle byproducts (e.g., dead animals and slaughter byproducts) that need to be handled after the rule becomes effective.

The environmental assessment (EA) considered each of the alternatives in terms of the need to provide maximum reasonable protection of human health without resulting in a significant impact on the environment. The EA considered environmental impacts related to landfill, incineration, composting, and land burial. The additional waste that might result from the selected action would be an extremely small amount compared to the total amount of waste generated by the cattle industry.

The agency has concluded that the interim final rule will not have a significant impact on the human environment, and that an environmental impact statement is not required. FDA's finding of no significant impact (FONSI) and the evidence supporting that finding, contained in an EA prepared

under 21 CFR 25.40, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday. FDA invites comments and submission of data concerning the EA and FONSI.

IX. Federalism

We have analyzed this interim final rule in accordance with the principles in Executive Order 13132. We have determined that the interim final rule does not contain policies that have substantial direct effects on the states, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the interim final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

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List of Subjects

21 CFR Part 189

Food additives, Food packaging, Incorporation by reference.

21 CFR Part 700

Cosmetics, Packaging and containers, Incorporation by reference.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 189 and 700 are amended as follows:

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

■ 1. The authority citation for 21 CFR part 189 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

■ 2. Part 189 is amended by redesignating subparts B and C as subparts C and D, respectively, and by adding a new subpart B to read as follows:

Subpart B—Prohibited Cattle Materials

Sec.

189.5 Prohibited cattle materials.

Subpart B—Prohibited Cattle Materials

§ 189.5 Prohibited cattle materials.

(a) *Definitions.* The definitions and interpretations of terms contained in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) apply to such terms when used in this part. The following definitions also apply:

(1) *Prohibited cattle materials* means specified risk materials, small intestine of all cattle, material from nonambulatory disabled cattle, material from cattle not inspected and passed, or MS(Beef). Prohibited cattle materials do not include tallow that contains no more than 0.15 percent hexane-insoluble impurities and tallow derivatives.

(2) *Inspected and passed* means that the product has been inspected and passed for human consumption by the appropriate regulatory authority, and at the time it was inspected and passed, it was found to be not adulterated.

(3) *Mechanically Separated (MS)(Beef)* means a meat food product that is finely comminuted, resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses, that meets the specifications contained in 9 CFR 319.5, the regulation that prescribes the standard of identity for MS (Species).

(4) *Nonambulatory disabled cattle* means cattle that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions.

(5) *Specified risk material* means the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older and the tonsils and distal ileum of the small intestine of all cattle.

(6) *Tallow* means the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues. Tallow must be free of prohibited cattle material or must contain not more than 0.15 percent hexane-insoluble impurities as determined by the method for ''hexane-insoluble matter,'' p. 465, in the ''Food Chemicals Codex,'' 5th Ed. (2004), incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or another method equivalent in accuracy, precision, and sensitivity to the method in the Food Chemicals Codex. You may obtain copies of the method from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418 (Internet address *http://www.nap.edu*) and the Division of Dairy and Egg Safety (HFS–306), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD

20740. Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(7) *Tallow derivative* means any chemical obtained through initial hydrolysis, saponification, or trans-esterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or trans-esterification may be applied to obtain the desired product.

(b) *Requirements.* No human food shall be manufactured from, processed with, or otherwise contain, prohibited cattle materials.

(c) *Records.* Manufacturers and processors of human food that is manufactured from, processed with, or otherwise contains, cattle material must make existing records relevant to compliance with this section available to FDA for inspection and copying.

(d) *Adulteration.* (1) Failure of a manufacturer or processor to operate in compliance with the requirements of paragraphs (b) or (c) of this section renders human food adulterated under section 402(a)(4) of the act.

(2) Human food manufactured from, processed with, or otherwise containing, prohibited cattle materials is unfit for human food and deemed adulterated under section 402(a)(3) of the act.

(3)*Food additive status.* Prohibited cattle materials for use in human food are food additives subject to section 409 of the act, except when used as dietary ingredients in dietary supplements. The use or intended use of any prohibited cattle material in human food causes the material and the food to be adulterated under section 402(a)(2)(C) of the act if the prohibited cattle material is a food additive, unless it is the subject of a food additive regulation or of an investigational exemption for a food additive under § 170.17 of this chapter.

PART 700—GENERAL

■ 3. The authority citation for 21 CFR part 700 continues to read as follows:

Authority: 21 U. S. C. 321, 331, 352, 355, 361, 362, 371, 374.

■ 4. Section 700.27 is added to read as follows:

§ 700.27 Use of prohibited cattle materials in cosmetic products.

(a) *Definitions.* The definitions and interpretations of terms contained in section 201 of the act apply to such terms when used in this part. The following definitions also apply:

(1) *Prohibited cattle materials* means specified risk materials, small intestine of all cattle, material from nonambulatory disabled cattle, material from cattle not inspected and passed, or MS(Beef). Prohibited cattle materials do not include tallow that contains no more than 0.15 percent hexane-insoluble impurities and tallow derivatives.

(2) *Inspected and passed* means that the product has been inspected and passed for human consumption by the appropriate regulatory authority, and at the time it was inspected and passed, it was found to be not adulterated.

(3) *Mechanically Separated (MS)(Beef)* means a meat food product that is finely comminuted, resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses that meet the specifications contained in 9 CFR 319.5, the regulation that prescribes the standard of identity for MS (Species).

(4) *Nonambulatory disabled cattle* means cattle that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions.

(5) *Specified risk material* means the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older and the tonsils and distal ileum of the small intestine of all cattle.

(6) *Tallow* means the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues. Tallow must be free of prohibited cattle risk material or must contain not more than 0.15 percent hexane-insoluble impurities determined by the method for ''hexane-insoluble matter,'' p. 465, in the ''Food Chemicals Codex,'' 5th Ed. (2004), incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or another method equivalent in accuracy, precision and sensitivity to the method in the Food Chemicals Codex.. You may obtain copies of the method from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418 (Internet address *http://www.nap.edu*) and the Division of Dairy and Egg Safety (HFS–306), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(7) *Tallow derivative* means any chemical obtained through initial hydrolysis, saponification, or trans-esterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or trans-esterification may be applied to obtain the desired product.

(b) *Requirements.* No cosmetic shall be manufactured from, processed with, or otherwise contain, prohibited cattle materials.

(c) *Records.* Manufacturers and processors of cosmetics that are manufactured from, processed with, or otherwise contain, cattle material must make existing records relevant to compliance with this section available to FDA for inspection and copying.

(d) *Adulteration.* Failure of a manufacturer or processor to operate in compliance with the requirements of paragraph (b) or (c) of this section renders a cosmetic adulterated under section 601(c) of the act.

Dated: July 8, 2004.

Lester M. Crawford,

Acting Commissioner of Food and Drugs,

[FR Doc. 04–15881 Filed 7–9–04; 11:00 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 189 and 700

[Docket No. 2004N–0257]

RIN 0910–AF48

Recordkeeping Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require that manufacturers and processors of human food and cosmetics that are manufactured from, processed with, or otherwise contain, material from cattle must establish and maintain records sufficient to demonstrate the food or cosmetic is not manufactured from, processed with, or does not otherwise contain, prohibited cattle materials. This is a companion rulemaking to FDA's interim final rule entitled ''Use of Materials Derived From Cattle in Human Food and Cosmetics,'' published in this issue of the **Federal Register**. FDA is proposing recordkeeping requirements because records documenting the absence of prohibited cattle materials are needed by manufacturers and processors of human food and cosmetics that contain cattle material to ensure that these products do not contain prohibited cattle materials. In addition, such records are necessary to help FDA ensure compliance with the requirements of the interim final rule.

DATES: You may submit written or electronic comments on the proposed rule by August 13, 2004. Submit written comments on the information collection requirements by August 13, 2004.

ADDRESSES: You may submit comments, identified by Docket No. 2004N–0257, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

• E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2004N–0257 in the subject line of your e-mail message.

• FAX: 301–827–6870.

• Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Effective Date and Opportunity for Public Comment'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Information Collection Provisions: Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Buckner, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1486.

SUPPLEMENTARY INFORMATION:

I. Background

In this issue of the **Federal Register** we are publishing an interim final rule entitled ''Use of Materials Derived From Cattle in Human Food and Cosmetics'' (referred to as the ''interim final rule'') to prohibit the use of prohibited cattle materials in human food, including dietary supplements, and cosmetics. Prohibited cattle materials include specified risk materials (SRMs), small intestine of all cattle, material from nonambulatory disabled cattle, material from cattle not inspected and passed for human consumption, and mechanically separated (MS)(Beef). SRMs are the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older; and the tonsils and distal ileum of the small intestine of all cattle. Prohibited cattle materials do not include tallow that contains no more than 0.15 percent hexane-insoluble impurities and tallow derivatives. The preamble to the interim final rule describes the background and justification for the ban on prohibited cattle materials in human food and cosmetics.

In this companion rulemaking, we are proposing that manufacturers and processors of human food and cosmetics that are manufactured from, processed with, or otherwise contain, material from cattle must establish and maintain records sufficient to demonstrate the food or cosmetic is not manufactured from, processed with, or does not otherwise contain, prohibited cattle materials. We believe that records documenting the absence of prohibited cattle materials in human food and cosmetics are critical for manufacturers, processors, and FDA to ensure compliance with the ban on the use of prohibited cattle materials in the interim final rule. Once material is removed from cattle, we may not be able to obtain the information necessary to determine whether it is prohibited cattle material. There is currently no way to test reliably for the presence of the bovine spongiform encephalopathy (BSE) agent or for the presence of prohibited cattle materials. Therefore, manufacturers and processors of human food and cosmetics must depend on records from the suppliers of cattle material to demonstrate that the supplier's cattle material does not contain prohibited cattle materials.

Through these records, manufacturers and processors of human food and cosmetics can ensure that prohibited cattle materials are not included in their products. The agency believes that recordkeeping and records access requirements are necessary immediately. The agency recognizes, however, that recordkeeping systems cannot be put into place immediately and, therefore, to include recordkeeping requirements in the interim final rule could result in manufacturers and processors immediately being in violation of the adulteration provisions of the Federal Food, Drug, and Cosmetic Act (the act) with respect to food and cosmetics because of their failure immediately to establish and maintain the necessary records as of the effective date of the interim final rule. For that reason, we are proposing record establishment and maintenance

requirements in this separate rulemaking, rather than including them in the interim final rule. In addition, the agency is seeking information from the public regarding the types of records that may already be available to document the absence of prohibited cattle materials in human food and cosmetics and the types of records that could be established to document the absence of prohibited cattle materials in these FDA-regulated products. In the meantime, FDA is ensuring that it can enforce the new prohibitions in the interim final rule through the provisions in that rule requiring FDA be given access to any existing records relevant to compliance with the ban on prohibited cattle materials.

II. Definitions From the Interim Final Rule

The following definitions are from the interim final rule (new §§ 189.5(a) and 700.27(a) (21 CFR 189.5(a) and 700.27(a))) and are included here because they are relevant to the proposed recordkeeping provisions:

• *Prohibited cattle materials* means specified risk materials, small intestine of all cattle, material from nonambulatory disabled cattle, material from cattle not inspected and passed, or MS(Beef). The phrase ''prohibited cattle materials'' includes all of the individual categories of materials and tissues prohibited by this rulemaking. Prohibited cattle materials do not include tallow that contains no more than 0.15 percent hexane-insoluble impurities and tallow derivatives.

• *Inspected and passed* means that the product has been inspected and passed for human consumption by the appropriate regulatory authority, and at the time it was inspected and passed, it was found to be not adulterated. This definition is consistent with the U.S. Department of Agriculture's (USDA's) definition in 9 CFR 301.2.

• *Mechanically Separated (MS) (Beef)* means a meat food product that is finely comminuted, resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses, that meets the specifications contained in 9 CFR 319.5, the USDA regulation that prescribes the standard of identity for MS (Species). This definition of MS(Beef) is consistent with the term as used by USDA in its recent BSE interim final rule (January 12, 2004, 69 FR 1862) prohibiting its use in food.

• *Nonambulatory disabled cattle* means cattle that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions. This definition of nonambulatory disabled cattle is consistent with the definition of nonambulatory disabled livestock in USDA's BSE interim final rule requiring nonambulatory disabled cattle be condemned and not used as human food.

• *Specified risk material (SRM)* means the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older and the tonsils and distal ileum of the small intestine of all cattle. This definition of SRM is the same as that used by USDA in its BSE interim final rule declaring SRMs to be inedible and prohibiting their use in human food.

• *Tallow* means the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues. Tallow must be free of prohibited cattle material or must contain not more than 0.15 percent hexane-insoluble impurities as determined by the method for ''hexane-insoluble matter'' in the 5th edition of the *Food Chemicals Codex*, incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or another method equivalent in accuracy, precision, and sensitivity. You may obtain a copy of the above-referenced method from the Division of Dairy and Egg Safety (HFS–306), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or you may examine a copy at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD or at the Office of the **Federal Register**, 800 North Capitol St., NW., suite 700, Washington, DC.

• *Tallow derivative* means any chemical obtained through initial hydrolysis, saponification, or transesterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or transesterification may be applied to obtain the desired product.

III. The Proposed Recordkeeping Requirements

A. Proposed Recordkeeping Requirements

We are proposing in §§ 189.5(c)(1) and 700.27(c)(1) that manufacturers and processors of human food and cosmetics that are manufactured from, processed with, or otherwise contain, material from cattle establish and maintain records that demonstrate that the material from cattle meets the requirements of the interim final rule. Because there is currently no way to test reliably for the presence of the BSE agent or for the presence of prohibited cattle materials, manufacturers and processors of human food and cosmetics must depend on records from the suppliers of cattle material to demonstrate that their source material is free from prohibited cattle material. Similarly, without adequate records, FDA may not know whether manufacturers and processors of human food and cosmetics have complied with the prohibitions against the use of prohibited cattle materials. Therefore, we are proposing under §§ 189.5(c)(1) and 700.27(c)(1) that manufacturers and processors of human food and cosmetics that are manufactured from, processed with, or otherwise contain, material from cattle must establish and maintain records sufficient to demonstrate that the human food and cosmetics do not contain prohibited cattle materials and that such records must be made available to FDA for inspection and copying.

For example, to satisfy the requirement in §§ 189.5(c)(1) and 700.27(c)(1) of this proposed rule that records must show the absence of specified risk materials, manufacturers and processors of human food and cosmetics that are manufactured with, processed from, or otherwise contain, brain from cattle would have to establish and maintain records to demonstrate, among other things, that the human food or cosmetic was not manufactured with, processed from, or does not otherwise contain, brain from cattle over 30 months of age.

In general, we would expect a manufacturer or processor of FDA-regulated human food or cosmetics containing cattle material (e.g., soup containing beef broth, dietary supplements containing cattle brain powder) to have the following types of records:

• A signed and dated affirmation (with contact information) by the slaughter establishment that cattle material supplied by that establishment in a particular shipment does not contain prohibited cattle materials. If lots of cattle material from different slaughter establishments are pooled into a final product, then a manufacturer or processor would need to maintain records from each slaughter establishment.

• For human food and cosmetics containing tallow, a manufacturer or processor would need to maintain records from a slaughter establishment affirming that the tallow was produced from material containing no prohibited cattle materials or similar records (i.e., signed, dated, with contact information) from the tallow supplier affirming that the tallow contains no more than 0.15 percent hexane-insoluble impurities.

We request comments on other ways in which the proposed recordkeeping requirements might be satisfied. We also request comments on whether existing recordkeeping practices include the required information and, if not, what changes the proposal would necessitate.

We note that USDA is working toward the establishment of a national database for animal identification, which should make maintaining information about source animals less burdensome.

We are proposing in §§ 189.5(c)(2) and 700.27(c)(2) that records be retained for 2 years after the date the records were created. We acknowledge that USDA in its BSE interim final rule is requiring that records be retained for 1 year. However, FDA-regulated human food, such as canned and dried foods and dietary supplements and cosmetics have a longer shelf life than most USDA-regulated products, which are primarily fresh meat. It is important for traceback and recall purposes that records be retained for the likely shelf life of the product. As discussed previously, records documenting the absence of prohibited cattle materials in human food and cosmetics are necessary to help FDA ensure compliance with the requirements of the interim final rule. It is important for the records to be kept during the shelf life of these products, so that FDA can ensure that products on the market are not adulterated. Therefore, we have tentatively concluded that records must be retained for 2 years.

We are proposing in §§ 189.5(c)(3) and 700.27(c)(3) that records be maintained at the manufacturing or processing establishment or at a reasonably accessible location. Proposed §§ 189.5(c)(4) and 700.27(c)(4) provide that maintenance of electronic records is acceptable and that electronic records are considered to be reasonably accessible if they are accessible from an onsite location.

Proposed §§ 189.5(c)(5) and 700.27(c)(5) provide that records required by this subpart must be available to FDA for inspection and copying.

Because we do not necessarily have access to records maintained at foreign establishments, we are proposing in §§ 189.5(c)(6) and 700.27(c)(6), respectively, that importers must electronically affirm their compliance with the recordkeeping requirements in §§ 189.5(c)(1) and 700.27(c)(1), respectively, at the time of entry into the United States of human food or cosmetics manufactured from, processed with, or otherwise containing, material from cattle and must provide the required records within a reasonable time if requested. The records we would expect are similar to those described above for domestic products. In order for importers to electronically affirm compliance, FDA intends to modify our electronic entry system to provide a field where importers can tell us that they have the required BSE records. Proposed §§ 189.5(c)(7) and 700.27(c)(7) provide that records established or maintained to satisfy the requirements of this subpart that meet the definition of electronic records in 21 CFR 11.3(b)(6) of this chapter are exempt from the requirements of part 11 of this chapter. Under the proposed rule, records that satisfy the requirements of this subpart but that are also required under other applicable statutory provisions or regulations would remain subject to part 11 of this chapter.

B. Legal Authority

Because this proposed rule is a companion rule to the interim final rule, we are issuing this proposed rule under the authorities cited in the interim final rule as well as sections 801(a) and 701(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(a) and 371(b)). As we stated in the interim final rule, FDA is issuing these regulations under the adulteration provisions in sections 402(a)(2)(C), (a)(3), (a)(4), (a)(5), 601(c), and under section 701(a) of the act (21 U.S.C. 342(a)(2)(C), (a)(3), (a)(4), (a)(5), 361(c), and 371(a)). Under section 402(a)(3) of the act, a food is deemed adulterated ''if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.'' ''Otherwise unfit for food'' is an independent clause in section 402(a)(3). It does not seem to require that a food be filthy, putrid, or decomposed for it to be ''otherwise unfit for food.'' We conclude that a food can be ''otherwise unfit for food'' based on health risks. We seek comments on this interpretation. Because of the discovery of a BSE positive cow in the United States and the possibility of disease transmission to humans from exposure to material from infected cattle, prohibited cattle materials (SRMs, small intestine of all cattle, MS(Beef), material from nonambulatory disabled cattle, and material from cattle not inspected and passed) these materials may present a risk to human health. Under our interpretation of section 402(a)(3), these materials are unfit for food. Under section 402(a)(4) of the act, a food is adulterated ''if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.'' The failure to ensure that food is prepared, packed, or held under conditions in which prohibited cattle materials do not contaminate the food constitutes an insanitary condition whereby it may have been rendered injurious to health and thus renders the food adulterated under section 402(a)(4) of the act.

Under section 402(a)(5) of the act, food is deemed adulterated if ''it is, in whole or in part, the product * * * of an animal which has died otherwise than by slaughter.'' Some cattle are not inspected and passed because they have died before slaughter. Material from these cattle that die otherwise than by slaughter is adulterated under section 402(a)(5). We are also relying on the food additive provision in section 402(a)(2)(C) of the act. As a result, because neither a food additive regulation nor an exemption is in effect for prohibited cattle materials intended for use in human food, such materials, with the exception of dietary ingredients in dietary supplements, are adulterated under section 402(a)(2)(C) of the act and their presence in food renders the food adulterated. Under section 601(c) of the act, a cosmetic is adulterated ''if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.'' The failure to ensure that a cosmetic is prepared, packed, or held under conditions in which prohibited cattle materials do not contaminate the cosmetic constitutes an insanitary condition whereby it may have been rendered injurious to health and, thus, renders the cosmetic adulterated under section 601(c) of the act.

Under section 701(a) of the act, FDA is authorized to issue regulations for the act's efficient enforcement. A regulation that requires measures to prevent human food from being unfit for food, from being or bearing an unsafe food additive, from being the product of an animal that died otherwise than by slaughter, and to prevent human food and cosmetics from being held under insanitary conditions allows for efficient enforcement of the act. These proposed regulations require that manufacturers

and processors of human food and cosmetics that are manufactured from, processed with, or otherwise contain material from cattle establish and maintain records that document the absence of prohibited cattle materials in such products and require that such records be made available to FDA for inspection and copying.

Once material is removed from cattle, we may not be able to obtain the information necessary to determine whether it is prohibited cattle material. For example, we would not know from examination of a spinal cord whether the source animal was over 30 months of age at the time of slaughter, or whether it was inspected and passed. Because there is currently no way to test reliably for the presence of the BSE agent or for the presence of prohibited cattle materials, manufacturers and processors of human food and cosmetics must depend on records from their suppliers of cattle materials to ensure that their source material does not contain prohibited cattle materials. Without records documenting the absence of prohibited cattle materials in source materials, manufacturers and processors of human food and cosmetics cannot know whether they are adulterating their products by including prohibited cattle materials. Therefore, a failure of manufacturers and processors to establish and maintain such records results in human food and cosmetics being prepared under insanitary conditions whereby they may have been rendered injurious to health. Furthermore, without adequate records, FDA cannot know whether manufacturers and processors of human food have complied with the prohibitions against use of prohibited cattle materials. Therefore, the proposed recordkeeping requirements are necessary for the efficient enforcement of the interim final rule. Under the proposed rule, failure to comply with the recordkeeping requirements would render the affected human food and cosmetics adulterated under sections 402(a)(4) and 601(a) of the act, respectively.

We are also issuing the provisions of this proposed rule related to records regarding imported human food and cosmetics under sections 801(a) and 701(b) of the act. Section 801(a) of the act provides requirements with regard to imported food and cosmetics and provides for refusal of admission into the United States of human food and cosmetics that appear to be adulterated. Section 701(b) of the act authorizes the Secretaries of Treasury and Health and Human Services to jointly prescribe regulations for the efficient enforcement of section 801 of the act. This proposed rule sets out requirements for imported human food and cosmetics to ensure that only products that fully comply with the requirements of the interim final rule are admitted into the United States.

IV. Effective Date and Opportunity for Public Comment

We are proposing that any final rule based on this proposal be effective 30 days after issuance of that final rule.

FDA invites public comment on this proposed rule. The agency will consider modifications to this proposed rule based on comments made during the comment period. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this proposed rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Preliminary Regulatory Impact Analysis of the Proposed Rule Recordkeeping Requirements on Materials Derived From Cattle in Human Food and Cosmetics

A. Benefit-Cost Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including the following conditions: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this proposed rule is not an economically significant regulatory action.

1. Need for Regulation

USDA's BSE interim final rule requires that specified risk materials, small intestine of all cattle, tissue from nonambulatory disabled cattle, and MS(Beef) not be used for human food. SRMs include the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse process of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older, and the tonsils and distal ileum of the small intestine of all cattle. USDA's BSE interim final rule requires that all of the prohibited materials be destroyed or sent to inedible rendering.

FDA, in response to the finding of an adult cow, imported from Canada, that tested positive for BSE in the State of Washington and to be consistent with USDA in regulating cattle products that could potentially transmit BSE, is issuing an interim final rule for FDA-regulated human food and cosmetics that contain cattle material. This proposed recordkeeping rule is a companion to the interim final rule and responds to the same public health concerns. This proposed rule would not affect the incidence of BSE in cattle, which is addressed in other FDA regulations. This proposed rule would serve as an additional safeguard to reduce human exposure to the agent that causes BSE that may be present in cattle-derived products from domestic and imported sources.

2. Proposed Rule Coverage

This proposed rule would require recordkeeping to document compliance with the provisions of the interim final rule that prohibit the use of ''prohibited cattle materials.'' Prohibited cattle materials include SRMs (brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse process of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older, and the tonsils and distal ileum of the small intestine of all cattle), small intestine of all cattle, tissue from nonambulatory disabled cattle, tissue from cattle not inspected and passed for human consumption, and MS(Beef).

This proposed rule would require that manufacturers and processors of human foods and cosmetics maintain records indicating that prohibited cattle materials have not been used in the manufacture or processing of a human food or cosmetic, and make such records available to FDA for inspection

and copying. There are several reasons for the proposed requirements. First, once cattle material such as brain or spinal cord is separated from the source animal, it may not be possible to determine the age of the animal from which the material came without records and, therefore, whether it is an SRM. Second, without records it may not be possible to determine whether a product contains material from cattle that were not inspected and passed. Third, a product might contain MS(Beef) without its presence being evident from the appearance of the product. Finally, manufacturers and processors might not, without a legal requirement, establish and maintain records to demonstrate that cattle material does not contain prohibited cattle materials. We have tentatively concluded that, to ensure that public health is protected, it is necessary that manufacturers and processors keep records indicating that human food and cosmetics are not manufactured from, processed with, or otherwise contain, prohibited cattle materials. Because we do not necessarily have access to records maintained at foreign establishments, we have included in this proposed rule a requirement that importers of food or cosmetics manufactured from, processed with, or otherwise containing, cattle material electronically affirm their compliance with the relevant recordkeeping requirements in this proposed rule at the time of entry into the United States and provide required records if requested.

3. Costs and Benefits of the Proposed Rule

This proposed rule would require manufacturers and processors of FDA-regulated human food and cosmetics manufactured from, processed with, or otherwise containing, cattle material to maintain records demonstrating that prohibited cattle materials are not used in their products. This proposed rule would require that the manufacturer or processor retain records for 2 years after using the cattle material in food or cosmetics. Records must be kept at the manufacturing or processing establishment or another reasonably accessible location. Manufacturers and processors must provide FDA with access to the required records for inspection and copying.

a. *Costs of proposed rule.* FDA used establishment data from the FDA Small Business Model (which includes information on all establishments in a manufacturing sector regardless of size) (Ref. 1) to determine the number of food manufacturers and processors that will need to comply with the proposed recordkeeping requirements. The model contains information on the number of establishments in certain food producing sectors but does not have information on specific ingredients used by the food establishments in making products. Data from the model indicates that 181 establishments produce spreads, 127 establishments produce flavoring extracts, 40 establishments produce canned soups and stews, 625 establishments produce nonchocolate candy, 88 establishments produce yogurt, and 451 establishments produce ice cream. FDA cannot verify that all of these establishments actually use cattle materials that fall under the jurisdiction of this proposed rule; many may not. It is likely that all of the 132 establishments that produce fats and oils currently use tallow derivatives, not tallow, so FDA assumes that no records will be required to be kept by this establishment group. We assume that only 25 percent of the establishments from the remaining production sectors listed above actually produce food that is manufactured from, processed with, or otherwise contains, material from cattle and are therefore required to keep records. We include only 25 percent of the establishments in our estimates because most of the manufacturers likely do not use cattle-derived materials in their products. FDA requests comments on this assumption.

FDA research shows that 25 establishments with U.S. addresses supply cattle-derived ingredients that are used in cosmetics (Ref. 2). These cattle-derived ingredients include albumin, brain extract, brain lipids, cholesterol and cholesterol compounds, fibronectin, sphingolipids, spleen extract, tallow, and keratin and keratin compounds. FDA research also shows that 22 foreign establishments may export these cattle-derived ingredients to U.S. cosmetic manufacturers. These foreign establishments would be required to provide records to their U.S. cosmetic manufacturer customers. We therefore include these foreign establishments when we estimate the recordkeeping costs. Imported cosmetic products represent about 10 to 20 percent of the cosmetic products on U.S. store shelves (Refs. 3, 4, and 5). However, the burden of the interim final rule to foreign cosmetics input suppliers and manufacturers will be less than the burden on domestic cosmetics producers. The burden will be less for foreign cosmetics manufacturers because Europe currently imposes some requirements similar to this rule.

FDA does not have enough information on the precise cattle material used by the 47 domestic and foreign cosmetics establishments to know how often tallow derivatives (exempt from this proposed rulemaking) are the only cattle-derived ingredient used in these products. We estimate that 75 percent (or 35) of the 47 cosmetics establishments would have to keep records for their cattle-derived ingredients. We estimate only 75 percent will keep records because many cosmetics use tallow derivatives as their only cattle-derived material, and such materials are not covered by the recordkeeping provisions. FDA requests comments on this assumption.

From FDA's dietary supplement database (Ref. 6), we are able to tell that there are 162 dietary supplement brand names that use cattle material as ingredients in their products. We assume that each brand name represents a facility that produces multiple dietary supplement products containing cattle-derived ingredients; therefore we assess recordkeeping costs for all 162 brand names. We do not have information to determine if any of the dietary supplement manufacturers use tallow derivatives (exempt from this recordkeeping requirement) as their only cattle-derived ingredient.

b. *Recordkeeping.* USDA's BSE interim final rule requires those establishments that slaughter cattle or that process the carcasses or parts of carcasses of cattle maintain daily records sufficient to document the implementation and monitoring of procedures for removal, segregation, and disposition of SRMs. USDA's BSE interim final rule requirements will reduce the startup costs of recordkeeping required by this proposed rule.

Recordkeeping costs include one-time costs and recurring costs. One-time costs include the costs of designing records and training personnel in the maintenance of the records. The recurring costs are the costs of ensuring that the records adequately document that the shipment of cattle materials to an FDA-regulated facility is free of prohibited cattle materials. The costs of retaining records and planning for an FDA request for records access are estimated to be zero. We estimate these costs to be zero because current business practices already dictate that records are kept for at least 1 year for tax purposes and product liability purposes; the marginal private benefit of retaining records for a second year is assumed to be greater than the marginal cost of doing so. Although there is no specific time period for providing records when requested, FDA notes that records requests costs are zero when

FDA gives the records submitter 24 hours to comply. These cost estimates are consistent with cost estimates used in FDA's proposed recordkeeping requirements in ''Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002'' (the Bioterrorism Act proposed recordkeeping rule) (68 FR 25188, May 9, 2003).

We assume that the one-time training burden incurred for each facility is approximately one-third of an hour. This time includes both the training required for personnel to learn how to verify that the appropriate records have been received and/or created, and also the training required for personnel to learn how to file and maintain those records. Given current business practices, we know personnel are familiar with recordkeeping; therefore, the requirement to maintain additional records is expected to be learned quickly. This training burden for recordkeeping is consistent with the recordkeeping training burden in the analysis for the Bioterrorism Act proposed recordkeeping rule (68 FR 25188; May 9, 2003) and the records maintenance burden used in the analysis of the juice HACCP rule (66 FR 6138; January 19, 2001). Consistent with the analysis conducted for the Bioterrorism Act proposed recordkeeping rule, FDA assumes an hourly cost of an administrative worker, $25.10 per hour, which has been doubled from $12.55 wage per hour to include overhead costs. This cost, $25.10 per hour, applies to all labor costs.

We use the FDA Labeling Cost Model to estimate the one-time records design costs per facility of $1,190 per stock keeping unit (SKU) (Ref. 7). It is likely that facilities using cattle-derived ingredients, whether the ingredients are for human food or cosmetics, will take advantage of their economies of scope and produce more than one product with these ingredients. It is probable that each establishment has several SKUs associated with products containing cattle-derived ingredients that will now require recordkeeping. To account for additional products and SKUs we take the record design costs per facility times 1.5 for a total design cost per facility of $1,785 ($1,095 in labor costs and $690 in capital costs).

We multiplied the cost per product per SKU by 1.5 to account for the additional records design required for the additional SKUs. The record design cost for the first affected product or SKU will be more expensive than the marginal cost of adding records for additional SKUs. This marginal cost of record design for additional SKUs could be negligible or it could come close to doubling the costs; we therefore pick 1.5, the midpoint of 1 and 2, to be the cost multiplier.

Consistent with the analysis conducted for the Bioterrorism Act proposed recordkeeping rule, this record design cost is assumed to be shared between two facilities—the upstream facility and the downstream facility—as both will need to be involved in record production that meets the needs of both the supplier and customer for the cattle-derived ingredient.

Unlike the Bioterrorism Act proposed recordkeeping rule, we do not have direct information on all the facilities covered; we do not have data on the number of slaughter plants or renderers that supply cattle material for the food and cosmetic manufacturers and processors under FDA jurisdiction. FDA does, however, have some information on the number and type of downstream facilities that receive this material. Using information on the number of food and cosmetic manufacturers that may use cattle-derived ingredients subject to the interim final rule and this proposed rule, we can account for the total shared records costs by assuming that each food manufacturer or processor facility listed in table 1 of this document procures ingredients from one upstream slaughter plant or renderer. It is likely that each manufacturer or processor has a contractual relationship with an upstream slaughterer or renderer. FDA requests comment on whether food manufacturers and processors maintain contractual relationships with one or several cattle-material input suppliers. Information on food producing facilities in table 1 represents U.S. facilities; dietary supplement numbers account for both domestic and foreign facilities; cosmetics numbers account for both domestic and foreign input suppliers.

TABLE 1.—FIRST YEAR RECORDS COSTS

Type of Product Using Cattle Material	Number of Facilities Estimated to Use /cattke Materials	Costs per Facility for Designing Records	Costs per Facility for Training (1/3 hour * $25.10 per Hour)	Total Setup Costs
Canned soups and stews	10	$1,785	$8.37	$17,934
Fats and oils	none			
Flavoring extracts	32	$1,785	$8.37	$57,388
Spreads	45	$1,785	$8.37	$80,702
Candy	156	$1,785	$8.37	$279,766
Yogurt	22	$1,785	$8.37	$39,454
Ice cream	113	$1,785	$8.37	$202,651
Dietary supplements	162	$1,785	$8.37	$290,526
Cosmetics	35	$1,785	$8.37	$62,768
Color additives	none			
Total	575	$1,785	$8.37	$1,031,189

The recurring recordkeeping cost is the cost of ensuring that appropriate records document the absence of prohibited cattle materials in human food and cosmetics. The framework for estimating the amount of time required for FDA-regulated facilities to ensure adequate records for each shipment of materials is based on the regulatory impact analysis of the Bioterrorism Act proposed recordkeeping rule. In that analysis we estimated that 30 minutes per week would be required to ensure that records on each shipment to and from a facility contain adequate information regarding the contents of the package, the transporter, supplier, and receiver.

The recordkeeping requirements of this proposed rule would cover only a small fraction of all ingredients used in the food and cosmetic manufacturing processes and only require that records of cattle-derived ingredient origin from the input supplier be verified and maintained by the food or cosmetic manufacturer and processor. Because this recordkeeping requirement is less complex than the recordkeeping requirements under the Bioterrorism Act and affects fewer ingredients, we estimate the per facility burden to be about one-half of the burden estimated for the Bioterrorism Act proposed recordkeeping rule: 15 minutes per week, or 13 hours per year. FDA assumes that this recordkeeping burden would be shared between two entities (i.e., the slaughter plant and the manufacturer of finished products containing cattle-derived ingredients).

Table 2 of this document shows the recurring recordkeeping costs for food and cosmetics manufacturers that would be needed to comply with this proposed rule. As stated earlier, information on food producing facilities in table 2 represents U.S. facilities; dietary supplement numbers account for both domestic and foreign facilities; cosmetics numbers account for both domestic and foreign input suppliers.

TABLE 2.—RECURRING ANNUAL RECORDS COSTS

Type of Product (From Raw or Rendered Material that Needs Accompanying Documentation)	Number of Facilities	Annual Costs per Facility of Ensuring that Appropriate Records Accompany Each Shipment Received (13 Hours * $25.10 per Hour)	Total recurring annual costs
Canned soups and stews	10	$326.30	$3,263
Fats and oils	none		
Flavoring extracts	32	$326.30	$10,442
Spreads	45	$326.30	$14,684
Candy	156	$326.30	$50,903
Yogurt	22	$326.30	$7,179
Ice cream	113	$326.30	$36,872
Dietary supplements	162	$326.30	$52,861
Cosmetics	35	$326.30	$11,421
Color additives	none		
Total	575	$326.30	$187,625

c. *Benefits of the proposed rule*. The benefits of this proposed rule are derived from the benefits of the interim final rule, which are the value of the public health benefits. The public health benefit is the reduction in the risk of the human illness associated with consumption of the agent that causes BSE.

If we define the baseline risk as the expected annual number of cases of variant Creutzfeldt-Jakob disease (vCJD) per year, then the annual benefits of prohibiting prohibited cattle materials for use in foods and cosmetics would be:

(baseline annual cases of vCJD—annual cases of vCJD under FDA interim final rule) x (value of preventing a case of VCJD).

An alternative way to characterize benefits is:

Reduction in annual cases in vCJD under FDA interim final rule x (value of preventing a case of vCJD).

We do not know the baseline expected annual number of cases. But based on the epidemiology of vCJD in the United Kingdom, we anticipate much less than one case of vCJD per year in the United States. Because the interim final rule and this proposed rule would reduce rather than eliminate risk of exposure to BSE infectious materials, the reduction in the number of cases will be some fraction of the expected number. The value of preventing a case of vCJD is the value of a statistical life plus the value of preventing a year-long or longer illness that precedes certain death for victims of vCJD. In a recent rule making regarding labeling of trans fatty acids (68 FR 41434, July 11, 2003), we used a range of $5 million to $6.5 million for the value of a statistical life. The value of preventing a vCJD case would be even higher because of the significant medical costs associated with the illness (Ref. 8). We estimate that the value of preventing a single case of vCJD ranges from $5.7 million to $7.1 million. This estimate includes direct medical costs, reduced ability of the ill person to function at home and at work, and the cost of premature death.

As discussed in the companion interim final rule, the Harvard-Tuskegee study has stated that a ban on specified risk materials, including cattle brains, spinal cord and vertebral column, from

inclusion in human and animal food would reduce the very few potential BSE cases in cattle by a further 88 percent and potential human exposure to infectivity in meat and meat products by a further 95 percent. The interim final rule, in conjunction with USDA's BSE interim final rule, will help achieve this reduction in potential human exposure. The interim final rule will also reduce potential human exposure to BSE infectivity in other human food not covered by the Harvard-Tuskegee study. This proposed rule would help ensure that the provisions of the interim final rule are carried out. For example, this proposed rule will require documentation that a domestically produced or foreign-produced dietary supplement or ingredient contains cattle material (e.g., brain) only from animals of an appropriate age.

d. *Summary of costs and benefits of proposed rule*. For this proposed rule, the costs are to setup and then to maintain a recordkeeping system to document all cattle-derived ingredients, except tallow derivatives, used in FDA-regulated food and cosmetics. The setup costs are about $1 million, and the annual costs of maintaining the recordkeeping system are about $200,000. The benefit of this proposed rule is that its requirements will—by requiring records that the provisions of the interim final rule have been followed—provide an additional safeguard against a case of vCJD occurring in humans.

B. Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that this proposed rule would have a significant economic impact on a substantial number of small entities.

First year costs of this proposed rule are about $1,800 per facility pair, with this cost divided between the upstream facility (slaughterhouse or rendering plant) and downstream facilities (manufacturers of food or cosmetics). FDA cannot determine if the cost sharing between the two firms would be equal. If the cost sharing is equal, then each facility would have to bear about a $900 first year cost to comply with the recordkeeping required by the proposed rule; if the cost sharing is not equal, then one facility in the partnership may bear zero costs all the way up to the total first year costs of $1,800. Recurring costs of this proposed rule are about $326 per facility relationship, which may be borne by only one firm or may be shared between facilities.

Using FDA's Small Business Model, we can estimate the number of facilities, when recordkeeping costs are shared and when they are not shared, that may go out of business as a result of this proposed rule.

Table 3 of this document shows that if facilities are only responsible for one-half of the recordkeeping cost burden (the burden is equally shared between the upstream and downstream facilities), then only two very small facilities (less than 20 employees) may be overburdened by having to comply with this proposed rule in a year's time; if the recordkeeping cost burden is borne by only one facility in the business relationship (either the upstream or the downstream firm), then six very small facilities (less than 20 employees) may have trouble complying with this interim final rule and staying in business. Facilities with 20 to 499 employees and facilities with at least 500 employees that must comply with this proposed rule are not in danger of having to stop operating as a result of the proposed rule.

TABLE 3.—POTENTIAL FOR FACILITY SHUTDOWN

Industry	Estimated Number of Facilities Affected	Regulation Burden on Each Facility (Shared Burden or Total Burden)	Number of Facilities in Industry That May Shut Down
Canned soups and stews	10	$900	0
Canned soups and stews	10	$1,800	0
Flavoring extracts	32	$900	0
Flavoring extracts	32	$1,800	0
Spreads	45	$900	0
Spreads	45	$1,800	1
Candy	156	$900	1
Candy	156	$1,800	2
Yogurt	22	$900	0
Yogurt	22	$1,800	0
Ice cream	113	$900	0
Ice cream	113	$1,800	1
Dietary supplements	162	$900	1
Dietary supplements	162	$1,800	2
Cosmetics	35	$900	0

TABLE 3.—POTENTIAL FOR FACILITY SHUTDOWN—Continued

Industry	Estimated Number of Facilities Affected	Regulation Burden on Each Facility (Shared Burden or Total Burden)	Number of Facilities in Industry That May Shut Down
Cosmetics	35	$1,800	0

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires cost-benefit and other analyses before any rule making if the rule would include a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' The current inflation-adjusted statutory threshold is $115 million. FDA has determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

D. The Small Business Regulatory Enforcement Fairness Act of 1996 Major Rule

The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million or more; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, OMB has determined that this proposed rule, should it become final, would not be a major rule for the purpose of congressional review.

VI. Paperwork Reduction Act Analysis

This proposed rule contains information collections that are subject to review by OMB under the Paperwork Reduction act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual recorkeeping burden included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Recordkeeping Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle

Description: This proposed rule would require records on FDA-regulated human food, including dietary supplements, and cosmetics that are manufactured from, processed with, or otherwise contain, material derived from cattle. This proposed rule is a companion rulemaking to FDA's interim final rule entitled ''Use of Materials Derived From Cattle in Human Food and Cosmetics'' published in this issue of the **Federal Register**. This proposed rule would require that manufacturers and processors of human food and cosmetics manufactured from, processed with, or that otherwise contain, material from cattle, maintain records demonstrating that the food or cosmetic has not been manufactured from, processed with, or does not otherwise contain, prohibited cattle materials and make such records available to FDA for inspection and copying. These proposed requirements are necessary because, once materials are separated from an animal, it may not be possible without records to know the following: (1) Whether the cattle materials contains SRMs, (2) whether the material contains small intestine, (3) whether the material was sourced from an animal that was inspected and passed for human consumption, (4) whether the material was sourced from a nonambulatory disabled animal, and (5) whether the product contains MS(Beef). Under the proposed rule, manufacturers and processors must retain records for 2 years at the manufacturing or processing establishment or another reasonably accessible location.

Information Collection Burden Estimate

FDA estimates the burden for this information collection as follows:

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Record	Total Capital Costs	Total Hours
189.5(c), 700.27(c)	575	1	575	44.33	$396,750	25,490
189.5(c), 700.27(c)	575	52	29,900	0.25	$0	7,475
Total one time burden hours						25,490
Total recurring burden hours						7,475

[1] There are no operating and maintenance costs associated with this collection of information.

Burden:

Hour Burden Estimate

FDA has determined that there are 575 facility relationships, consisting of the following facilities: A producer of cattle materials requiring records—this may be a slaughterhouse or renderer (the upstream facility) and a purchaser of cattle materials requiring documentation—this may be a human food or cosmetic manufacturer or processor. Together, the upstream and downstream facilities are responsible for designing records, verifying records, and storing records that contain information on sources of cattle materials.

In this hour burden estimate, as in the economic analysis, we treat these recordkeeping activities as shared activities between the upstream and downstream facilities. It is in the best interests of both facilities in the relationship to carry the burden necessary to comply with this proposed rule; therefore we estimate the time burden of developing these records as a joint task between the two facilities.

One Time Burden

The first year burden of the proposed recordkeeping requirement consists of the facilities training their employees on how to keep the records necessary to comply with this proposed rule and designing the records. The one-time training burden incurred for each facility is assumed to be the equivalent of 1 month's worth of on-the-job training or approximately one-third of an hour. This time includes both the training required for personnel to verify that appropriate records have been received and/or created, and also the training required by personnel to file and maintain those records. Therefore, the total one-time training burden is 575 x 0.33 hrs = 190 hours.

We use the FDA Labeling Cost Model to estimate the one-time records design costs per facility of $1,785. This cost includes the costs of designing records for multiple products and consists $1,095 in labor costs (and $690 in capital costs which we deal with in the next section). Dividing the $1,095 of labor costs by the hourly wage for workers of $25.10 (doubled to include overhead), we have a design-time burden per facility of about 44 hours; we multiplied the burden per facility by 575 facilities to get an estimated total training and design burden of 25,490 hours.

Table 4 row 1 of this document shows the total hour burden from training and records design to be 44.33 hours per facility x 575 record keepers = 25,490 hours for the year.

Recurring Burden

The recurring recordkeeping burden is the burden of sending and verifying documents regarding shipments of cattle material that is to be used in human food and cosmetics.

We estimate this recurring recordkeeping burden will be about 15 minutes per week, or 13 hours per year. FDA assumes that this recordkeeping burden will be shared between two entities (i.e., the slaughter plant and the manufacturer of finished products containing cattle-derived ingredients). Therefore the total recurring burden will be 13 hrs x 575 = 7,475 hours, as shown in row 2 of table 4 of this document.

Capital Cost and Operating and Maintenance Cost Burden

We use the FDA Labeling Cost Model to estimate the one-time records design costs per facility of $1,875 per facility, based on the facility producing multiple products with ingredients that now require records. Over $1,000 of the record design cost is due to labor, but $690 of the records design represents capital costs to each facility. The total capital costs for records design for all facilities is $690 x 575 = $396,750. These one time costs are shown in row 1 of table 4 of this document.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to fax comments regarding information collection to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer, FDA, FAX: 202–395–6974.

VII. Environmental Impact Analysis

The agency has determined under 21 CFR 25.30(h) that this action is a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have tentatively concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. References

1. Model for Estimating the Impacts for Regulatory Costs on the Survival of Small Businesses and its Application to Four FDA-Regulated Industries, Final Report, Eastern Research Group, July 2002.

2. CTFA International Buyer's Guide, produced by the Cosmetics, Toiletries, and Fragrances Association (CTFA) found on the Internet at *http://www.ctfa-buyersguide.org*.

3. Memorandum of Telephone Conversation, Dr. Gerald McEwen, Cosmetic, Toiletry, and Fragrance Association and Karen L. Carson, Food and Drug Administration, June 29, 2004.

4. United States International Trade Commission Interactive Tariff and Trade DataWeb, Essential Oils and Resinoids; Perfumery, Cosmetic or Toilet Preparations. Accessed online at *http://dataweb.usitc.gov*.

5. U.S. Census Bureau, 1997 Economic Census: Bridge Between NAICS and SIC Manufacturing. Accessed online at *http://www.census.gov*.

6. FDA Dietary Supplement Products with Animal Ingredients Database (DSPD–A), September 2002, RTI International, contractor—FDA Contract Number 06673.013

7. FDA Labeling Cost Model, Final Report, Muth, M. K., E. C. Gledhill, and S. A. Karns, RTI, Health, Social, and Economics Research, Research Triangle, NC, April 2002.

8. Memorandum to the Record, The Costs of a Case of Variant Creutzfeldt-Jakob disease (vCJD), 2004.

List of Subjects

21 CFR Part 189

Food additives, Food packaging, Substances prohibited from use in human food.

21 CFR Part 700

Cosmetics, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, the Food and Drug Administration proposes to amend 21 CFR parts 189 and 700 as follows:

* * * * *

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

1. The authority citation for 21 CFR part 189 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371, 381.

2. Section 189.5 is amended by revising paragraph (c) to read as follows:

§ 189.5 Prohibited cattle materials.

* * * * *

(c)(1) Records. Manufacturers and processors of human food that is manufactured from, processed with, or otherwise contains, material from cattle

must establish and maintain records sufficient to demonstrate that the food is not manufactured from, processed with, or does not otherwise contain, prohibited cattle materials.

(2) Records must be retained for 2 years after the date the records were created.

(3) Records must be retained at the manufacturing or processing establishment or at a reasonably accessible location.

(4) The maintenance of electronic records is acceptable. Electronic records are considered to be reasonably accessible if they are accessible from an onsite location.

(5) Records required by this subpart must be available to FDA for inspection and copying.

(6) Importers must electronically affirm their compliance with the recordkeeping requirements in paragraph (c)(1) of this section at the time of entry into the United States of human food manufactured from, processed with, or otherwise containing, material from cattle and must, if requested, provide the required records within a reasonable time.

(7) Records established or maintained to satisfy the requirements of this subpart that meet the definition of electronic records in § 11.3(b)(6) of this chapter are exempt from the requirements of part 11 of this chapter. Records that satisfy the requirements of this subpart but that are also required under other applicable statutory provisions or regulations remain subject to part 11 of this chapter.

* * * * *

PART 700—GENERAL

3. The authority citation for 21 CFR part 700 continues to read as follows:

Authority: 21 U. S. C. 321, 331, 352, 355, 361, 362, 371, 374.

4. Section 700.27 is amended by revising paragraph (c) to read as follows:

§ 700.27 Use of prohibited cattle materials from cattle in cosmetic products.

* * * * *

(c)(1) Records. Manufacturers and processors of a cosmetic that is manufactured from, processed with, or otherwise contains, material from cattle must establish and maintain records sufficient to demonstrate that the cosmetic is not manufactured from, processed with, or does not otherwise contain, prohibited cattle materials.

(2) Records must be retained for 2 years after the date the records were created.

(3) Records must be retained at the manufacturing or processing establishment or at a reasonably accessible location.

(4) The maintenance of electronic records is acceptable. Electronic records are considered to be reasonably accessible if they are accessible from an onsite location.

(5) Records required by this subpart must be available to FDA for inspection and copying.

(6) Importers must electronically affirm their compliance with the recordkeeping requirements in paragraph (c)(1) of this section at the time of entry into the United States of cosmetics manufactured from, processed with, or otherwise containing, material from cattle and must, if requested, provide the required records within a reasonable time.

(7) Records established or maintained to satisfy the requirements of this subpart that meet the definition of electronic records in § 11.3(b)(6) of this chapter are exempt from the requirements of part 11 of this chapter. Records that satisfy the requirements of this subpart but that are also required under other applicable statutory provisions or regulations remain subject to part 11 of this chapter.

* * * * *

Dated: July 8, 2004.

Lester M. Crawford,

Acting Commissioner of Food and Drugs.

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Federal Register

Wednesday,
July 14, 2004

Part III

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, et al.

Food Safety and Inspection Service

9 CFR Parts 309, 310, 311, 318, and 319

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 589

Federal Measures To Mitigate BSE Risks: Considerations for Further Action; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, and 85

[Docket No. 04–047–1]

RIN 0579–AB86

Food Safety and Inspection Service

9 CFR Parts 309, 310, 311, 318, and 319

[Docket No. 04–021ANPR]

RIN 0583–AC88

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 589

[Docket No. 2004N–0264]

RIN 0910–AF46

Federal Measures To Mitigate BSE Risks: Considerations for Further Action

AGENCIES: Animal and Plant Health Inspection Service and Food Safety and Inspection Service, USDA; and Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; invitation to comment.

SUMMARY: Following detection of bovine spongiform encephalopathy (BSE) in an imported dairy cow in Washington State in December 2003, the Secretaries of the U.S. Departments of Agriculture and Health and Human Services announced a series of regulatory actions and policy changes to strengthen protections against the spread of BSE in U.S. cattle and against human exposure to the BSE agent. The Secretary of Agriculture also convened an international panel of experts on BSE to review the U.S. response to the Washington case and make recommendations that could provide meaningful additional public or animal health benefits. The purpose of this advance notice of proposed rulemaking is to inform the public about the panel's recommendations and to solicit comment on additional measures under consideration based on those recommendations and other considerations.

DATES: APHIS and FSIS will consider all comments received on or before September 13, 2004. FDA will consider all comments received on or before August 13, 2004.

ADDRESSES:

You may submit comments to APHIS by any of the following methods:

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–047–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–047–1.

• E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–047–1'' on the subject line.

• Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS web site.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

You may submit comments to FSIS by any of the following methods:

• Mail, including floppy disks or CD–ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.

Instructions: All submissions received must include the Agency name and Docket No. 04–021ANPR.

Other information: All comments submitted in response to this advance notice of proposed rulemaking, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm.*

You may submit comments to FDA by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• Agency web site: *http://www.fda.gov/dockets/comments.* Follow the instructions for submitting comments.

• E-mail: *fdadockets@oc.fda.gov.* Include Docket No. 2004N–0264 or Regulatory Identification No. (RIN) 0910–AF46 in the subject line of your e-mail message.

• Fax: (301) 827–6870.

• Mail/hand delivery/courier (for paper, disc, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions must include the Agency name and Docket No. 2004N–0264 or Regulatory Identification No. (RIN) 0910–AF46.

Other information: All comments received, including any personal information provided, will be posted without change to *http://www.fda.gov/dockets/ecomments,* For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

APHIS: Dr. Anne Goodman, Supervisory Staff Officer, Regionalization Evaluation Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

FSIS: Daniel L. Engeljohn, Ph.D., Deputy Assistant Administrator, Office of Policy, Program, and Education Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, Telephone (202) 205–0495, Fax (202) 401–1760. Copies of references cited in this document are available in the FSIS Docket Clerk's Office (see **ADDRESSES**).

FDA: Burt Pritchett, D.V.M., Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500

Standish Pl., Rockville, MD 20855, 301–827–0177, e-mail: *burt.pritchett@fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Purpose

Bovine spongiform encephalopathy (BSE), widely referred to as ''mad cow disease,'' is a progressive and fatal neurological disorder of cattle. The disease was first diagnosed in 1986 in the United Kingdom, but had never been detected in a native animal in North America until May 2003 when it was diagnosed in a single dairy cow in Canada. Subsequently, in December 2003, BSE was diagnosed in a single dairy cow in Washington State that had been imported from Canada. Variant Creutzfeld-Jakob disease, a chronic and fatal neurodegenerative disease that affects humans, has been linked to the consumption of beef products contaminated with the BSE agent. The U.S. Government—specifically, the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA)—has implemented a number of measures to protect the public from health risks associated with BSE and to prevent the spread of the disease in U.S. cattle. The agencies are currently considering additional safeguards based on the recommendations of an international review team convened by the Secretary of Agriculture and on other considerations. The purpose of this advance notice of proposed rulemaking (ANPRM) is to inform the public about the report and recommendations of the international review team and to solicit public comment on the additional measures under consideration.

II. Background

A. Bovine Spongiform Encephalopathy

BSE belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). In addition to BSE, TSEs include, among other diseases, scrapie in sheep and goats, chronic wasting disease (CWD) in deer and elk, and Creutzfeldt-Jakob disease (CJD) in humans. The agent that causes BSE and other TSEs has yet to be fully characterized. The theory that is most accepted in the scientific community is that the agent is a prion, which is an abnormal form of a normal protein known as cellular prion protein, although other agents have also been implicated. There is currently no test to detect the disease in a live animal. BSE is confirmed by postmortem microscopic examination of an animal's brain tissue or by detection of the abnormal form of the prion protein in an animal's tissues. The pathogenic form of the protein is both less soluble and more resistant to degradation than the normal form. The BSE agent is extremely resistant to heat and to normal sterilization processes. It does not evoke any demonstrated immune response or inflammatory reaction in host animals.

Since November 1986, there have been more than 180,000 confirmed cases of BSE in cattle worldwide. The disease has been confirmed in native-born cattle in 22 European countries in addition to the United Kingdom, and in some non-European countries, including Japan, Israel, and Canada. Over 95 percent of all BSE cases have occurred in the United Kingdom, where the epidemic peaked in 1992/1993, with approximately 1,000 new cases in cattle reported per week. Agricultural officials in the United Kingdom have taken a series of actions to eliminate BSE, including making it a reportable disease, banning mammalian meat-and-bone meal in feed for all food-producing animals, prohibiting the inclusion of animals more than 30 months of age in the animal and human food chains, and destroying all animals showing signs of BSE and other potentially exposed animals at high risk of developing the disease. As a result of these actions, most notably the feed bans, the rate of newly reported cases of BSE in the United Kingdom has decreased sharply and continues a downward trend.

In 1996, a newly recognized form of the human disease CJD, referred to as variant CJD (vCJD), was reported in the United Kingdom. Scientific and epidemiological studies have linked vCJD to exposure to the BSE agent, most likely through human consumption of cattle products contaminated with the agent that causes BSE. To date, approximately 150 probable and confirmed cases of vCJD have been reported in the United Kingdom, where there had been a high level of consumption of contaminated cattle product. In the United States, where measures to prevent the introduction and spread of BSE have been in place for some time, there is far less potential for human exposure to the BSE agent. The Centers for Disease Control and Prevention (CDC) leads a surveillance system for vCJD in the United States, and as of December 2003, had not detected vCJD in any resident of the United States that had not lived in or traveled to the United Kingdom for extended periods of time. In 2002, a probable case of vCJD was reported in a Florida resident who had lived in the United Kingdom during the BSE epidemic. Epidemiological data indicate that the patient likely was exposed to the BSE agent before moving to the United States.

B. Prevention of BSE in the United States

The United States Government has implemented a number of measures since 1989 to prevent BSE from entering the United States and to prevent the spread of the disease should it be introduced into the United States.

Import Restrictions and 1997 Feed Ban

Since 1989, USDA's Animal and Plant Health Inspection Service (APHIS) has prohibited the importation of live cattle and other ruminants and certain ruminant products, including most rendered protein products, into the United States from countries where BSE is known to exist. In 1997, due to concerns about widespread risk factors and inadequate surveillance for BSE in many European countries, APHIS extended importation restrictions on ruminants and ruminant products to all of the countries in Europe.

Also in 1997, HHS' Food and Drug Administration (FDA) prohibited the use of all mammalian protein, with the exception of pure pork and pure equine protein from single species processing plants, in animal feeds given to cattle and other ruminants (62 FR 30936; June 5, 1997; codified at 21 CFR 589.2000). The rule allows exceptions for certain products believed at the time to present a low risk of transmitting BSE: blood and blood products; gelatin; inspected meat products that have been cooked and offered for human food and further heat processed for feed (such as plate waste and used cellulosic food casings, referred to below as ''plate waste''); and milk products (milk and milk protein). Firms must keep specified records on the manufacture of feed, have processes in place to prevent commingling of ruminant and nonruminant feed containing prohibited materials, and ensure that nonruminant feed containing materials prohibited in ruminant feed is labeled conspicuously with the statement, ''Do not feed to cattle or other ruminants.''

In December 2000, APHIS expanded its prohibitions on imports of rendered ruminant protein products from BSE-restricted regions to include rendered protein products of any animal species because of concern that cattle feed supposedly free of ruminant protein may have been cross contaminated with the BSE agent. FDA also issued import alerts on animal feed ingredients for APHIS-listed countries.

Animal Surveillance Program and Emergency Response Plan

The United States has had an active surveillance program for BSE since 1990. Historically, the sampling strategy was designed to detect one BSE-infected animal per million cattle and to take into account regional differences while striving for uniform surveillance throughout the country. Since 1993, BSE surveillance in the United States has met or exceeded international standards as outlined in the *Terrestrial Animal Health Code* of the Office International des Epizooties (OIE), the world organization for animal health. For additional details on BSE surveillance since 1990, see *http://www.aphis.usda.gov/lpa/issues/bse/bse-surveillance.html.*

Since its inception, animal surveillance for BSE in the United States has been designed to sample those cattle in which BSE is most likely to occur and in which the disease would most likely be detected. The targeted surveillance population has, therefore, included adult cattle displaying clinical signs that could be considered to be consistent with BSE. This includes cattle exhibiting signs of central nervous system (CNS) abnormalities, cattle that are non-ambulatory, cattle that have died on the farm from unexplained causes, and cattle that display other clinical signs that could be compatible with BSE. The BSE surveillance program has historically not included apparently healthy cattle presented for routine slaughter because that is not the population where the disease would most likely be detected.

Further, APHIS, in cooperation with USDA's Food Safety and Inspection Service (FSIS), prepared an emergency response plan to be used in the event that BSE is identified in the United States (*http://www.aphis.usda.gov/lpa/issues/bse/bsesum.pdf*). FDA and other Federal agencies have also developed contingency plans that would operate in association with the USDA plan. USDA and HHS have held various outreach and tabletop exercises to test various components of their contingency plans.

C. Risk of BSE in the United States

In April 1998, USDA contracted with the Harvard Center for Risk Analysis (HCRA) at Harvard University and the Center for Computational Epidemiology at Tuskegee University to conduct a comprehensive investigation of BSE risk in the United States. The report,[1] widely referred to as the Harvard Risk Assessment or the Harvard Study, is referred to in this document as the Harvard-Tuskegee Study. It was completed in 2001 and released by the USDA. Following a peer review of the Harvard-Tuskegee Study in 2002, the authors responded to the peer review comments and released a revised risk assessment in 2003.[2]

The Harvard-Tuskegee Study reviewed available scientific information related to BSE and other TSEs, assessed pathways by which BSE could potentially occur in the United States, and identified measures that could be taken to protect human and animal health in the United States. The assessment concluded that the United States is highly resistant to any proliferation of BSE or similar disease and that measures taken by the U.S. Government and industry make the United States robust against the spread of BSE to animals or humans should it be introduced into this country.

The Harvard-Tuskegee Study concluded that the most effective measures for reducing potential introduction and spread of BSE are: (1) The ban placed by APHIS on the importation of live ruminants and ruminant meat-and-bone meal from the United Kingdom since 1989 and all of Europe since 1997; and (2) the feed ban instituted in 1997 by FDA to prevent recycling of potentially infectious cattle tissue. The Harvard-Tuskegee Study further indicated that, if introduction of BSE had occurred via importation of live animals from the United Kingdom prior to 1989, mitigation measures already in place would have minimized exposure and begun to eliminate the disease from the cattle population.

The Harvard-Tuskegee Study also identified three pathways or practices that could facilitate human exposure to the BSE agent or the spread of BSE should it be introduced into the United States: (1) Non-compliance with FDA's ruminant feed regulations prohibiting the use of certain proteins in feed for cattle and other ruminants; (2) rendering of animals that die on the farm and use (through illegal diversion or cross contamination) of the rendered product in ruminant feed; and (3) the inclusion of high-risk tissues from cattle, such as brain and spinal cord, in products for human consumption. The Harvard-Tuskegee Study's independent evaluation of the potential risk mitigation measures predicts that a prohibition against rendering of animals that die on the farm would reduce the potential cases of BSE in cattle following hypothetical exposure by 82 percent as compared to the base case scenario,[3] and that a ban on specified risk materials (SRMs)[4], including brain, spinal cord and vertebral column, from inclusion in human and animal food would reduce potential BSE cases in cattle by 88 percent and potential human exposure to BSE by 95 percent as compared to the base case scenario.

In 2003, following the identification of BSE in a native-born cow in Canada, the HCRA evaluated the implications of a then hypothetical introduction of BSE into the United States[5], using the same simulation model developed for the initial Harvard-Tuskegee Study. This assessment confirmed the conclusions of the earlier study—namely, that the United States presents a very low risk of establishing or spreading BSE should it be introduced.

In May 2004, USDA contracted with the HCRA to revise and update the BSE risk assessment model to reflect recent events that have occurred in the United States. These recent events include such increased risk mitigation measures as the prohibition of SRMs in human food.

[1] Harvard Center for Risk Analysis, Harvard School of Public Health, and Center for Computational Epidemiology, College of Veterinary Medicine, Tuskegee University, ''Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States,'' *http://www.aphis.usda.gov/lpa/issues/bse/risk_assessment/mainreporttext.pdf,* 2001.

[2] Research Triangle Institute, ''Review of the Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States,'' accessed online at *http://www.aphis.usda.gov/lpa/issues/bse/BSE_Peer_Review.pdf,* 2002. Harvard Center for Risk Analysis, Harvard School of Public Health, ''Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States: Response to Reviewer Comments Submitted by Research Triangle Institute,'' *http://www.aphis.usda.gov/lpa/issues/bse/ResponsetoComments.pdf,* 2003. Harvard Center for Risk Analysis, Harvard School of Public Health, and Center for Computational Epidemiology, College of Veterinary Medicine, Tuskegee University, ''Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States,'' *http://www.aphis.usda.gov/lpa/issues/bse/madcow.pdf,* 2003.

[3] Harvard Center for Risk Analysis, Harvard School of Public Health, and Center for Computational Epidemiology, College of Veterinary Medicine, Tuskegee University, ''Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States,'' section 3, ''Simulation Model and Base Case Assumptions,'' *http://www.aphis.usda.gov/lpa/issues/bse/risk_assessment/mainreporttext.pdf,* 2001.

Harvard Center for Risk Analysis, Harvard School of Public Health, and Center for Computational Epidemiology, College of Veterinary Medicine, Tuskegee University, ''Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States,'' *http://www.aphis.usda.gov/lpa/issues/bse/madcow.pdf,* 2003.

[4] Specified risk materials (SRMs) are ruminant tissues that have demonstrated infectivity at some point during the BSE incubation period.

[5] Harvard Center for Risk Analysis, Harvard School of Public Health, ''Evaluation of the Potential Spread of BSE in Cattle and Possible Human Exposure Following Introduction of Infectivity into the United States from Canada,'' accessed online at *http://www.aphis.usda.gov/lpa/issues/bse/harvard_10–3/text_wrefs.pdf,* 2003.

In addition, USDA requested that the HCRA specifically analyze the recommendations of the international review team to determine whether the recommendations would provide significant differences in risk mitigation levels. While this information will be valuable as we analyze any future actions concerning domestic policy changes, the existing Harvard-Tuskegee model demonstrates that, with the safeguards in place—even before the case of BSE was detected in Washington State in December 2003—the risk of spread of BSE from any introduction was very low, due largely to import restrictions and the 1997 feed ban. Because control measures have been increased and strengthened since that time, it is anticipated that any changes to the model reflecting additional control measures would continue to demonstrate a further decrease in risk of spread.

III. The Case in Washington State and U.S. Actions in Response

On December 23, 2003, USDA announced a presumptive positive case of BSE in a dairy cow in Washington State. Samples had been taken from the cow on December 9 as part of USDA's BSE surveillance program. The BSE diagnosis was made on December 22 and 23 by histopathology and immunohistochemical testing at the National Veterinary Services Laboratories in Ames, IA, and verified on December 25 by the international reference laboratory, the Veterinary Laboratories Agency in Weybridge, England. This case followed the identification of BSE in a single cow in Alberta, Canada, in May 2003.

A. The Epidemiological Investigation and Related Activities

Upon detection of the BSE-positive cow in Washington State, USDA, FDA and other Federal and State agencies immediately began working together closely to perform a full epidemiological investigation [6], trace any potentially infected cattle, trace potentially contaminated rendered product, increase BSE surveillance, and take additional measures to address human and animal health.

The epidemiological investigation and DNA test results confirm that the infected cow was not indigenous to the United States, but rather was born and most likely became infected in Alberta, Canada, prior to Canada's 1997 implementation of a ban on feeding mammalian protein to ruminants.

The infected cow entered the United States on September 4, 2001, as part of a shipment of 81 animals from the source herd in Canada. Of these 81 animals, 25 were determined, as a result of the epidemiological investigation, to be higher risk as defined by the OIE. A higher risk animal is one born on premises known to be a source of an infected animal within 12 months before or after the birth of the infected cow.

Counting the infected cow, USDA definitively accounted for 14 of the 25 animals considered to be higher risk, along with 15 others from the source herd that were in the initial shipment, plus 7 additional animals dispersed from the birth herd. The number of animals found—35 in addition to the infected cow—is consistent with the number expected after analysis of regional culling rates.

In addition to those animals, another 220 cattle were culled from 10 premises on which one or more source herd animals were found. These cattle were culled because they could possibly have been from the Canadian source herd. Out of an abundance of caution, all 255 animals were euthanized and tested for BSE; all of the animals tested negative. Because there is a small probability that BSE can be transmitted maternally, the two live offspring of the infected cow were also euthanized. A third had died at birth in October 2001. All carcasses were properly disposed of in accordance with Federal, State, and local regulations.

In conjunction with USDA's investigation, FDA conducted an extensive feed investigation. By December 27, 2003, FDA had located all potentially infectious product rendered from the BSE-positive cow in Washington State. The product was disposed of in a landfill in accordance with Federal, State, and local regulations.

The United States concluded the active investigation and culling activities related to the one infected cow on February 9, 2004, and redirected resources toward planning, implementing, and enforcing national policy measures to promote BSE surveillance and protect human and animal health.

B. International Review Team Convened

Prior to the conclusion of the epidemiological investigation, on January 22–24, 2004, the Secretary of Agriculture convened an international panel of experts to assess the epidemiological investigation, provide expert opinion as to when the active phase should be terminated, consider the response actions of the United States to date, and provide recommendations as to actions that could be taken to provide additional meaningful human or animal health benefits in light of the North American experience.

The international review team was organized as a subcommittee of the Secretary of Agriculture's Foreign Animal and Poultry Disease Advisory Committee. The subcommittee consisted of Prof. U. Kihm (Switzerland), Prof. W. Hueston (USA), Dr. D. Matthews (UK), Prof. S. C. MacDiarmid (New Zealand), and Dr. D. Heim (Switzerland). The subcommittee (referred to below as the IRT) provided its report on February 4, 2004. The complete report, ''*Report on Measures Relating to BSE in the United States,*'' is available for viewing at *http://www.aphis.usda.gov/lpa/issues/bse/BSE_tr_ban_ltr%20_enc_2.pdf.*

In summary, the IRT was complimentary of the scope, thoroughness, and appropriateness of the epidemiological investigation and concluded that the investigation conformed to international standards. The review team members concurred that the investigation should be terminated. In addition, the IRT made several policy recommendations designed to further reduce the risk of cattle being exposed to BSE. These recommendations included several changes that the Federal Government had already embarked upon related to SRMs, non-ambulatory (downer) cows, surveillance, laboratory diagnosis, feed restrictions, traceability (*i.e.*, animal identification), education, control of implementation measures, and lessons learned. These Federal Government policies are discussed in the next section. A formal response to the IRT report, prepared collaboratively by USDA and FDA, may be viewed at *http://www.aphis.usda.gov/lpa/issues/bse/bse_responsetorep.pdf.*

C. Regulatory and Policy Actions

APHIS, FSIS, and FDA have taken additional steps to specifically address the potential pathways or practices that the Harvard-Tuskegee Study said could contribute most either to the spread of BSE in cattle or to human exposure to the BSE agent should BSE be introduced into the United States.

Safeguards on Food and Feed Supplies

FSIS, in a series of three interim final rules that were published and made effective on January 12, 2004, took additional measures to prevent the BSE agent from entering the human food supply. In its interim final rule titled,

[6] A report of the epidemiological investigation, ''A Case of Bovine Spongiform Encephalopathy (BSE) in the United States,'' was issued in March 2004 and is available at *http://www.aphis.usda.gov/lpa/issues/bse/BSE_tr_ban%20_ltr_enc_1.pdf.*

''Prohibition on the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle'' (FSIS Docket No. 03–025IF; 69 FR 1861), and referred to below as the SRM rule, FSIS designated the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse process of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months of age and older, and the tonsils and distal ileum of the small intestine of all cattle as SRM, and prohibited their use as human food. To ensure effective removal of the distal ileum, the SRM rule requires establishments to remove the entire small intestine and dispose of it as inedible.

To facilitate the enforcement of the SRM rule, FSIS has developed procedures to verify the approximate age of cattle that are slaughtered in official establishments. Such procedures, based on records or examination of teeth, are intended to ensure that SRM from cattle 30 months of age and older are effectively segregated from edible materials.[7]

As provided by the SRM rule, materials designated as SRMs if they are from cattle 30 months of age and older will be deemed to be SRMs unless the establishment can demonstrate that they are from an animal that was younger than 30 months of age at the time of slaughter.

Furthermore, FSIS has developed procedures to verify that cross contamination of edible tissue with SRMs is reduced to the maximum extent practical in facilities that slaughter cattle, or process carcasses or parts of carcasses of cattle, both younger than 30 months of age and 30 months of age and older.[8] If an establishment uses dedicated equipment to cut through SRMs, or if it segregates cattle 30 months of age and older from cattle younger than 30 months of age, then the establishment may use routine operational sanitation procedures (*i.e.*, no special sanitation procedures are required). If the establishment doesn't segregate cattle 30 months of age and older from younger cattle, equipment used to cut through SRMs must be cleaned and sanitized before it is used on carcasses or parts from cattle less than 30 months of age. FSIS believes that, due to the multiple risk mitigation measures implemented in the United States to prevent the spread of BSE, these procedures will reduce to the maximum extent possible cross contamination of carcasses with high-risk tissues. However, to assist in determining whether it should strengthen the measures required of establishments, FSIS issued a press release during the comment period for the SRM rule that specifically requested public comment on methods to prevent cross contamination of carcasses with SRMs.[9]

The SRM rule also declared mechanically separated beef (MS(beef)) to be inedible and prohibited its use for human food. Additionally, the SRM rule prohibited all non-ambulatory disabled cattle for use as human food.

The second interim final rule, titled, ''Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery (AMR) Systems' (FSIS Docket No. 03–038IF; 69 FR 1874–1885), prohibited products produced by advanced meat recovery (AMR) systems from being labeled as ''meat'' if, among other things, they contain CNS tissue. AMR is a technology that removes muscle tissue from the bone of beef carcasses under high pressure without incorporating significant amounts of bone and bone products into the final meat product. FSIS had previously established and enforced regulations that prohibited spinal cord from being included in products labeled ''meat.'' This interim final rule expanded that prohibition to include dorsal root ganglia (DRG), clusters of cells connected to the spinal cord along the vertebral column. In addition, because the vertebral column and skull of cattle 30 months of age and older have been designated as SRM, they cannot be used for AMR. Because they are not SRMs, the skull and vertebral column from cattle younger than 30 months of age may be used in AMR systems. However, establishments that use skulls and vertebral columns in the production of beef AMR product must be able to demonstrate that such materials are from cattle younger than 30 months of age.

The third interim final rule, titled ''Prohibition on the Use of Certain Stunning Devices Used to Immobilize Cattle During Slaughter'' (FSIS Docket No. 01–0331IF; 69 FR 1885–1891), prohibited the use of penetrative captive bolt stunning devices that deliberately inject air into the cranial cavity of cattle because they may force large fragments of CNS tissue into the circulatory system of stunned cattle where they may become lodged in edible tissues.

Also on January 12, 2004, FSIS published a notice announcing that it would no longer pass and apply the mark of inspection to carcasses and parts of cattle selected for BSE testing by APHIS until the sample is determined to be negative (FSIS Docket No. 03–048N; 69 FR 1892; ''Bovine Spongiform Encephalopathy Surveillance Program'').

FDA continues to conduct inspections to monitor compliance of feed mills, renderers, and protein blenders with the 1997 feed ban rule and is expanding the scope of its inspections to include other segments of animal feed production and use, such as transportation firms, farms that raise cattle, and animal feed salvage operations. Compliance by feed mills, renderers, and protein blenders with the feed ban is currently very high. Information on inspections and compliance is available at *http://www.fda.gov/cvm/index/bse/RuminantFeedInspections.htm.*

FDA, like FSIS, has taken additional measures to prevent the BSE agent from entering the human food supply. In an interim final rule published in the Rules and Regulations section of today's **Federal Register**, FDA prohibits SRMs, the small intestine of all cattle, material from non-ambulatory disabled cattle, material from cattle not inspected and passed for human consumption, and MS (beef) from use in FDA-regulated human food, including dietary supplements, and cosmetics (FDA Docket No. 2004N–0081; ''Use of Materials Derived from Cattle in Human Food and Cosmetics'').

This interim final rule on human food and cosmetics, as well as a second one related to animal feed, were announced by FDA on January 26, 2004. The interim final rule on animal feed was to remove the current exemptions in 21 CFR 589.2000 for blood and blood products and plate waste, prohibit the use of poultry litter in ruminant feed, and require equipment, facilities, or production lines to be dedicated to nonruminant animal feed if firms use protein that is prohibited in ruminant feed.

The IRT recommendations provide a different set of measures for reducing the risks associated with animal feed. The IRT approach is to prevent potentially infective tissues from ever entering animal feed channels. Although FDA believes the measures previously announced would serve to reduce the already small risk of BSE

[7] See FSIS Notice 05–04, ''Interim Guidance for Non-Ambulatory Disabled Cattle and Age Determination,'' January 12, 2004, *http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=/oppde/rdad/fsisnotices/5–04.pdf;* and FSIS Notice 10–04, ''Questions and Answers Regarding the Age Determination of Cattle and Sanitation,'' January 29, 2004, *http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=/oppde/rdad/fsisnotices/10–04.pdf.*

[8] See FSIS Notice 10–04.

[9] FSIS press release of March 31, 2004.

spread through animal feed, the broader measures recommended by the IRT, if implemented, could make some of the previously announced measures unnecessary. Either approach would require a significant change in current feed manufacturing practices. Therefore, FDA believes that additional information is needed to determine the best course of action in light of the IRT recommendations and has decided not to issue an interim final rule with the changes to the feed ban described in the January 26 announcement. Instead, FDA is requesting additional information through this ANPRM on the recommendations of the IRT, as well as on other measures under consideration to protect the animal feed supply.

The Federal Government has also taken additional significant nonregulatory actions in response to the detection of BSE in North America. These actions include enhancing surveillance for BSE; implementing a national animal identification system; enhancing laboratory diagnosis; and obtaining and providing guidance and strategies for the future.

Animal Surveillance

On March 15, 2004, Secretary of Agriculture Ann Veneman announced a one-time enhanced BSE surveillance plan, targeting cattle from populations considered at highest risk for BSE, as well as a sampling of animals from the clinically normal, aged cattle population (over 30 months as evidenced by the eruption of at least one of the second set of permanent incisors). The plan, implemented on June 1, 2004, incorporates recommendations from the IRT and the Harvard Center for Risk Analysis. Notably, the IRT has reviewed the surveillance plan and indicated that it is comprehensive and science-based, and that it addresses the important issues with regard to BSE surveillance in cattle.

Over a period of 12–18 months, APHIS will test as many cattle as possible in the targeted high-risk population. Data obtained in this effort will help determine the probable prevalence of BSE in the United States and whether risk management policies need to be adjusted. If at least 268,500 targeted high-risk animals are sampled, we will be able to detect BSE even if as few as 5 animals in this targeted population are positive. The key to surveillance is to look at the population of animals where the disease is likely to occur. Thus, if BSE is present in the U.S. cattle population, there is a significantly better chance of finding the BSE within this targeted high-risk cattle population than within the general cattle population.

In addition, FSIS public health veterinarians have begun assisting in APHIS' BSE animal surveillance efforts by collecting brain samples from all cattle condemned during ante-mortem inspection at federally inspected establishments. This allows APHIS to focus on sample collection at locations other than federally inspected establishments, such as rendering operations and farms.

APHIS ensured access to slaughterhouses and rendering plants for sample collection via a final rule published March 4, 2004 (APHIS Docket No. 99–017–3, 69 FR 10137, ''Blood and Tissue Collection at Slaughtering and Rendering Establishments''). Samples may also be collected on the farm, at veterinary diagnostic laboratories, at public health laboratories, at veterinary clinics, sale barns, livestock auctions, etc.

Strengthening of the passive surveillance system for BSE through outreach and education is an integral part of the USDA surveillance plan. In this regard, APHIS has developed plans to enhance existing educational materials and processes in conjunction with other Federal and State agencies. These outreach efforts will inform veterinarians, producers, and affiliated industries of the USDA surveillance goals and the sometimes subtle clinical signs of BSE, and will encourage reporting of suspect or targeted cattle on farm and elsewhere. One of the tools for reporting high-risk cattle, announced on June 8, 2004, is a toll-free number (1–866–536–7593).

To help cover additional costs incurred by industries participating in the surveillance plan, and to help encourage reporting and collection of targeted samples, USDA may provide payments for certain transportation, disposal, cold storage, and other costs.

For a complete discussion of the enhanced BSE surveillance plan that will be carried out over the next 12–18 months, refer to APHIS' Bovine Spongiform Encephalopathy (BSE) Surveillance Plan of March 15, 2004 (available at *http://www.aphis.usda.gov/lpa/issues/bse/BSE_Surveil_Plan03–15–04.pdf).*

Laboratory Diagnosis

Testing of BSE surveillance samples is conducted at APHIS' National Veterinary Services Laboratories (NVSL) and at a participating network of State and Federal veterinary diagnostic laboratories throughout the continental United States. USDA has approved 12 geographically dispersed laboratories to assist with BSE surveillance.

USDA has also approved five rapid screening test kits and has provided funding for high-throughput laboratory equipment as necessary. The rapid screening test kits are commercially produced diagnostic test kits, intended for use in surveillance programs such as these. These kits are best used as screening tests—*i.e.*, they are very sensitive and are intended to identify anything that might possibly be positive. Each of the laboratories will use one or more of the rapid screening tests with the goal of having initial results available within 24 to 72 hours after the sample is collected.

NVSL remains the national reference laboratory for BSE. If any sample reacts on the initial screening test, the tissues will be immediately forwarded to NVSL for confirmatory testing. Samples with this type of initial reaction will be reported as inconclusives. Samples will only be determined to be negative or positive by NVSL using immunohistochemistry and/or western blot confirmatory testing. NVSL will also conduct quality assurance check testing and test a certain number of routine samples to ensure proficiency in conducting all approved rapid screening tests.

USDA will make public the number of tests conducted and the results on a periodic basis. Updates are available at *http://www.aphis.usda.gov/lpa/issues/bse-enhan_surv/bse_test_results.html.*

The United States Government encourages and supports the development of new diagnostic tests for BSE and other TSEs. USDA researchers regularly discuss advancements in this area with their counterparts throughout the world and will evaluate all scientific data submitted as part of an application for USDA approval of a diagnostic test.

Animal Identification (Traceability)

Animal disease outbreaks around the globe over the past decade and the detection of a BSE-positive cow in the United States in December 2003 have intensified public interest in developing a national animal identification program for the purpose of protecting animal health.

Having a system that can identify individual animals or groups, the premises where they are located, and the date of entry to each premises is fundamental to controlling any disease threat, foreign or domestic, to U.S. animal resources. Further, we must be able to retrieve this information in a timely manner after confirmation of disease outbreak in order to implement successful intervention strategies.

While there is currently no nationwide animal identification system in the United States for all animals of a given species, some segments of certain species are required to be identified as part of current APHIS disease eradication activities. In addition, some significant regional voluntary identification programs are in place, and others are currently being developed and tested.

USDA has defined several key objectives for a national system. These include: (1) Allowing producers, to the extent possible, the flexibility to use current systems or adopt new ones; (2) having a system that is technology neutral, so that all existing effective technologies and new technologies that may be developed in the future may be utilized; (3) having a system that builds upon national data standards to ensure that a uniform and compatible system evolves; (4) having a system that does not preclude producers from being able to use it with production management systems that respond to market incentives; and (5) designing the architecture so that the system does not unduly increase the role and size of the Government.

Design and implementation of such a national animal identification system are well under way (see *http://www.aphis.usda.gov/lpa/issues/nais/nais.html*). USDA is moving forward first on a voluntary basis, to integrate the various types of animal identification programs that currently exist in the United States, and then will scale up to the national level, to include those producers and animals that are not currently in an animal identification program. The goal is to create an effective, uniform, consistent, and efficient national system.

APHIS will initially fund cooperative agreements to help State and Tribal governments establish premises identification systems and to evaluate additional identification pilot projects that could also become a part of the overall animal identification system. Associations and other segments of the livestock industry may participate in State and Tribal projects. APHIS posted a request for proposals for these cooperative agreements in June and will accept applications until July 15, 2004. APHIS anticipates initiating projects funded through these cooperative agreements in August. USDA is currently conducting a series of listening sessions (June–August 2004) across the country, inviting public discussion on the national animal identification program.

Guidance and Strategy

The Federal Government has several existing mechanisms to ensure appropriate guidance and involvement from outside experts and interested stakeholders. The Secretary of Agriculture's Advisory Committee on Foreign Animal and Poultry Diseases (SACFAPD), which has 17 members from industry, States, and academia, advises the Secretary on program operations, measures to prevent the introduction of foreign animal diseases into the United States, and contingency measures should such a disease be introduced into the United States. This group meets regularly and can also solicit public and expert advice. In fact, the IRT was convened as a subcommittee of the SACFAPD. Similarly, FDA obtains guidance from outside experts through its Transmissible Spongiform Encephalopathy Advisory Committee (TSEAC). In addition, FDA's TSEAC includes a representative from APHIS.

The Federal Government also obtains guidance and advice from experts within the Government. USDA has an internal Transmissible Spongiform Encephalopathy (TSE) Working Group that provides scientific recommendations related to TSEs, including BSE. This technical group meets regularly and includes representatives from FSIS and USDA's Agricultural Research Service, as well as from HHS' Centers for Disease Control and Prevention, the National Institutes of Health, and FDA, and the Department of Defense, as needed. There is also a policy level Interagency TSE Working Group that provides support and advice.

Furthermore, USDA and HHS participate on international working groups set up to prevent the spread of BSE to new areas of the world and to standardize approaches for addressing BSE surveillance and response. USDA and HHS participate in OIE meetings as members and consultants, and U.S. representatives offer technical advice on BSE-related issues and uphold U.S. interests in the World Health Organization and the Pan American Health Organization as well. Since 1986, the United States has exchanged scientists with several European countries, and U.S. officials have historically and routinely met with their counterparts in many countries on animal health risk mitigation measures. A standing North American Animal Health Committee that includes chief veterinary officers from Canada, Mexico, and the United States has developed and is working to implement a North American BSE strategy. After the finding of the BSE-positive cow in Canada in May 2003, U.S., Canadian, and Mexican officials sent a letter to the OIE regarding a scientific approach to BSE and trade issues. The United States has also taken a leadership role by proposing a new ''minimal risk'' BSE classification and criteria for trade in low-risk products for countries with established mitigation measures and a low incidence of BSE (APHIS Docket No. 03–080–1; 68 FR 62386–62405; November 4, 2003: ''Bovine Spongiform Encephalopathy; Minimal Risk Regions and Importation of Commodities'').

IV. OIE Standards

As recognized in the Agreement on the Application of Sanitary and Phytosanitary Measures (''SPS Agreement'') under the auspices of the World Trade Organization (''WTO''), the OIE is the relevant international organization responsible for development and periodic review of standards, guidelines, and recommendations with respect to animal health and zoonoses (diseases that are transmissible from animals to humans). The OIE criteria for terrestrial animals (mammals, birds, and bees) are detailed in the *Terrestrial Animal Health Code* (available on the OIE Web site at *http://www.oie.int*).

Chapter 2.3.13 of the *Terrestrial Animal Health Code* describes the OIE standards with regard to BSE and is supplemented by Appendix 3.8.4 on surveillance and monitoring systems for BSE. The OIE standards for diagnostic tests with regard to BSE are described in Chapter 2.3.13 of the *Manual of Diagnostic Tests and Vaccines for Terrestrial Animals.* However, the OIE standards are constantly evolving and are subject to change in response to new scientific findings and perspectives.

The current OIE standards contain criteria for establishing the BSE risk status of a country or zone. Under the current standards, the BSE-risk status of a country or zone is determined on the basis of a risk assessment identifying all potential factors for BSE occurrence and their historic perspective; an assessment of the likelihood that a TSE agent has been introduced via the importation of potentially contaminated animals or commodities (*i.e.*, meat-and-bone meal or greaves (the protein-containing residue obtained after the partial separation of fat and waste during the process of rendering), live animals, animal feed and feed ingredients, and products of animal origin for human consumption); and an assessment of the likelihood of exposure of the BSE agent to cattle, based on a consideration of a number of criteria, including the

existence and duration of a feed ban and BSE surveillance and monitoring programs. In addition, risk status levels are based on the length of time for demonstrated compliance with these criteria and on the reporting of BSE cases or BSE incidence rate.

To increase the likelihood of detecting BSE, the OIE recommends surveillance targeting cattle displaying clinical signs compatible with BSE and cattle that have died or been killed for reasons other than routine slaughter. In countries or zones not free of BSE, the OIE recommends routine sampling at slaughter. Surveillance should focus primarily on cattle over 30 months of age. The OIE also recommends a minimum number of samples to be taken from the targeted population for effective surveillance, based on the total cattle population over 30 months of age.

The OIE currently specifies five BSE status levels for countries or zones: Free, provisionally free, minimal risk, moderate risk, and high risk. The purpose of the categorization system is to enable and encourage appropriate risk mitigation measures to be applied to commodities for trade.

The OIE also sets international standards for trade in live cattle, fresh meat and meat products, gelatin and collagen prepared from bones, tallow and tallow derivatives, and dicalcium phosphate, according to the BSE risk status of a country or zone. In order to protect public and animal health, the OIE currently recommends different risk mitigating measures, with increased requirements as the status of a country or zone moves from lower to higher levels of BSE risk. The present OIE Code does not suggest a total embargo of animals and animal products coming from BSE affected countries, not even from countries considered as having high BSE risk, as long as the proper risk mitigation measures are applied.

The OIE also identifies certain commodities that should not require any BSE-related restrictions, regardless of the BSE status of the exporting country or zone. For example, the *Terrestrial Animal Health Code* does not recommend any restrictions, regardless of the BSE status of the country, in trade of semen, embryos, milk, milk products, and gelatin and collagen coming from hides and skins because these products or tissues have not demonstrated BSE infectivity in cattle.

The actions taken by the U.S. Government to prevent the introduction and spread of BSE in the United States are generally consistent with international standards for BSE, although not in all cases exactly the same. For example, U.S. surveillance for BSE in cattle has exceeded the OIE standards since 1993. Based on an adult cattle population of approximately 40 million, the OIE standard (Terrestrial Animal Health Code Appendix 3.8.4) calls for a minimum of 433 samples. By comparison, the United States has increased the number of samples from approximately 700 in fiscal year 1993 to approximately 20,000 in fiscal year 2002.

USDA appreciates the significant contributions of the OIE to science-based understanding of the true BSE-related risks in international trade and will continue to work with the OIE and other relevant international organizations. The United States is also taking a leadership role by proposing criteria for low-risk product trade with countries that have a low incidence of BSE and historically strong risk mitigation measures, mentioned previously in this document in section III, *The Case in Washington State and U.S. Actions in Response,* under *Guidance and Strategy.*

V. Recommendations of the IRT and Additional Measures for Consideration

A. Response Actions

In its general remarks about actions taken by the United States in response to the case of BSE in Washington State, the IRT, under ''Response actions,'' recommended that policy actions under consideration by the United States achieve the following objectives:

- Reduce public health risk for consumer protection.
- Limit recycling and amplification of the agent.
- Establish the level of effectiveness of measures through surveillance.
- Prevent any inadvertent introduction of BSE from abroad in the future.
- Contribute to the prevention of the spread of the epidemic worldwide [p. 3].

The IRT report further stated:

> To achieve the above objectives, a system of complementary barriers, and implementation and enforcement of all measures on the national level, is necessary.
>
> The objectives cannot be successfully achieved by government alone; effective implementation of measures requires a shared commitment and action on the part of national and state governments, producers, consumers, private industry, and veterinary professionals. Extensive national coordination and cooperation is imperative, and should be extended to include the continent of North America. We suggest that a BSE task force, which includes governmental and non governmental stakeholders, is established under the leadership of the USDA in order to assure that policies are developed and implemented in a consistent, scientifically valid manner. [p. 3]

As noted earlier in section III, *The Case in Washington State and U.S. Actions in Response,* under *Guidance and Strategy,* both the Secretary of Agriculture and the Commissioner of FDA have advisory committees, which include both governmental and nongovernmental stakeholders, to provide guidance on issues concerning BSE and other TSEs. There are also technical and policy level interagency working groups on TSEs.

USDA welcomes comment on the following question:

1. Would there be value in establishing a specialized advisory committee or standing subcommittee on BSE?

The IRT also evaluated actions taken by the U.S. Government in response to the confirmation of the case of BSE in the United States and made recommendations regarding further actions that could provide additional public or animal health benefits. We are requesting public comment below on additional measures we are considering based on the IRT's recommendations. Because we believe that prior actions taken by the Federal Government already address IRT recommendations related to surveillance, laboratory diagnosis, non-ambulatory (downer) cattle, and certain other recommendations (*e.g.,* concerning the mechanical removal of bone from beef) (see the discussions in section III, *The Case in Washington State and U.S. Actions in Response),* we are not specifically requesting comment on those recommendations.

B. The Human Food Supply

In the section of the IRT report headed, ''Specified Risk Materials (SRM),'' the IRT stated:

> Unless aggressive surveillance proves the BSE risk in the USA to be minimal according to OIE standards, the [IRT] recommends that the SRM identified below be excluded from both the human and animal food chains.
>
> - Brain and spinal cord of all cattle over 12 months of age.
> - Skull and vertebral column of cattle over 12 months of age—these are not inherently infected, but cannot be separated from dorsal root/trigeminal ganglia or from residual contamination with CNS tissue.
> - Intestine—from pylorus to anus—from all cattle.
>
> In the mean time, until the level of BSE risk has been established, the [IRT] concedes that exclusion of CNS, skull, and vertebral column from cattle over 30 months, and intestines from cattle of all ages, for use in human food is a reasonable temporary compromise. [pp. 3–4]

USDA has initiated an aggressive and comprehensive surveillance program that will assist in estimating the prevalence of BSE in the United States and provide a basis for further assessments of whether and how U.S. actions related to BSE should be adjusted. Also, FSIS and FDA require the exclusion of CNS tissue, skull, and vertebral column from cattle 30 months of age and older, and the small intestine and tonsils from cattle of all ages, from human food, including dietary supplements, and cosmetics.

With regard to the age of cattle from which SRMs should be removed, FSIS and FDA have specified that CNS tissue, skull and vertebral column should be removed from cattle 30 months of age and older. Research to date indicates that 30 months is the appropriate threshold for removal of these materials unless surveillance indicates that there is a high prevalence of BSE in the U.S. cattle population, which the agencies believe is unlikely because of the feed and import restrictions that the Federal Government has imposed. The reason that age matters at all is that levels of infectious agent in certain tissues vary with the age of animal. Pathogenesis studies, where tissues obtained from orally infected calves were assayed for infectivity, have shown that infectivity was not detected in most tissues until at least 32 months post-exposure.[10] The exception to this is the distal ileum, the distal portion of the small intestine, where infectivity was confirmed from experimentally infected animals as early as 6 months post-exposure and tonsils, where infectivity was confirmed at 10 months post-exposure.

Although a few cases of BSE have been found in cattle under 30 months of age, research demonstrates that the shorter incubation period (*i.e.*, infection developing in less than 30 months) is apparently linked to younger animals receiving a relatively large infectious dose.[11] The younger cases have occurred primarily in countries with significant levels of circulating infectivity. Specifically, BSE has been found in animals less than 30 months of age in the United Kingdom in the late 1980s to early 1990s, when the incidence of BSE was extremely high. This research also suggests that a calf must receive an oral dose of 100 grams of infected brain material containing high levels of the infectious agent to produce disease within a minimum of approximately 30 months.[12]

BSE testing in the European Union (EU) was conducted throughout the year 2001. This testing revealed only two positive animals that were younger than 30 months of age in a total of 2,147 positive cases. Of note is that these animals were 28 and 29 months of age. For reference, in 2001, a total of 8,516,227 tests were conducted within the EU, and, of those, 1,366,243 tests were conducted on animals less than 30 months of age. In 2002, there were no animals less than 30 months of age that were positive in the EU testing scheme. Approximately 10.2 million tests were conducted in EU Member States in 2002, and, of these, 1.6 million were conducted on animals less than 30 months of age. The average mean age of positive animals in the EU in 2002 was 96.9 months, an increase from 85.9 months in 2001.[13]

This suggests an effective and prudent dividing line for purposes of mitigating risk. Infected cattle over 30 months of age may have levels of the abnormal prion in affected tissues that are sufficient to infect other animals fed protein derived from these tissues. Infected cattle younger than 30 months of age are unlikely to have infectious levels of the prion protein.[14] The 30-month age limit is accepted internationally in BSE standards set by various countries and is consistent with OIE recommendations.

With respect to the IRT recommendation that the entire intestine from cattle of all ages should be excluded from the human and animal food chains, FSIS noted in its SRM rule that BSE infectivity has only been confirmed in the distal ileum of the small intestine. FSIS requires the entire small intestine to be removed and disposed of as inedible to ensure effective removal of the distal ileum. Consistent with USDA's restrictions, FDA prohibits the use of the small intestine in FDA-regulated human food and cosmetics.

Note: The aspect of this recommendation pertaining to removal of SRMs from animal feed is addressed below under ''Animal Feed Restrictions.'')

FSIS and FDA request comment, especially scientific information, on the following question:

2. What data or scientific information is available to evaluate the IRT recommendation described above, including that aspect of the recommendation concerning what portion of the intestine should be removed to prevent potentially infective material from entering the human food and animal feed chains?

C. Animal Feed Restrictions

Specified Risk Materials (SRMs)

In the ''Feed Restrictions'' section of the report, the IRT recommended: ''All SRM should be excluded from all animal feed, including pet food.'' [p. 5] FDA has prohibited the use of most mammalian proteins in ruminant feed since 1997. The IRT report stated that, ''Considering the BSE situation in North America, the [IRT] believes the partial (ruminant to ruminant) feed ban that is currently in place is insufficient to prevent exposure of cattle to the BSE agent.'' [p. 5] The IRT further stated that, ''While science would support the feed bans limited to the prohibition of ruminant derived [meat and bone meal] MBM in ruminant feed, practical difficulties of enforcement demand more pragmatic and effective solutions.'' [p. 6] Specifically, the IRT cited epidemiological evidence in the United Kingdom that highlight the dangers of cattle infection through the consumption of feed that had been contaminated accidentally when manufactured in premises that legitimately used mammalian meat and bone meal in feed for pigs and poultry. [p. 5] In addition, the IRT report cited an ongoing attack rate study at the Veterinary Laboratories Agency in the United Kingdom that demonstrates

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[10] Wells, G.A.H., *et al.* 1994. Infectivity in the ileum of cattle challenged orally with bovine spongiform encephalopathy. Veterinary Record. 135 (2): 40–41.

Wells, G.A.H., *et al.* 1998. Preliminary observations on the pathogenesis of experimental bovine spongiform encephalopathy (BSE): An update. Veterinary Record. 142: 103–106.

European Union Scientific Steering Committee (EU SSC), 2002. Update of the opinion on TSE infectivity distribution in ruminant tissues (initially adopted by the Scientific Steering Committee at its meeting of 10–11 January 2002 and amended at its meeting of 7–8 November 2002) following the submission of (1) a risk assessment by the German Federal Ministry of Consumer Protection, Food, and Agriculture and (2) new scientific evidence regarding BSE infectivity distribution in tonsils; European Commission, Scientific Steering Committee, Health and Consumer Protection Directorate General; *http://www.europa.eu.int/comm./food/fs/sc/ssc/outcome_en.pdf.*

[11] EU SSC 2002 (see footnote 9).

[12] EU SSC 2002 (see footnote 9).

Department for Environment, Food and Rural Affairs (DEFRA), U.K., 2003; DEFRA BSE information, *http://www.defra.gov.uk/animalh/bse/index.htm.*

[13] European Commission (EC), 2002; Report on the monitoring and testing of ruminants for the presence of transmissible spongiform encephalopathy (TSE) in 2001, European Commission Health and Consumer Protection Directorate-General; *http://europa.eu.int/comm/food/fs/bse/bse45_en.pdf.*

European Commission (EC), 2003; Report on the monitoring and testing of ruminants for the presence of transmissible spongiform encephalopathy (TSE) in 2002, European Commission Health and Consumer Protection Directorate-General; *http://europa.eu.int/comm/food/fs/bse/testing/annual_%20report_2002_en.pdf.*

[14] Wells, *et al.*. 1994; Wells, *et al.*. 1998; EU SSC 2002 (see footnote 9).

transmission of BSE with 10 mg of infectious brain tissue. [p. 5] Although not yet published, more recent results from this study have demonstrated transmission with a lower dose of infectious brain tissue. These levels are significantly lower than the 1 gram infectious dose that had been demonstrated in the same study at the time the 1997 BSE feed rule was issued. Further, the Harvard-Tuskegee Study showed that removing SRMs from all animal feed reduces by 88 percent the potential exposure of cattle to the BSE agent when 10 BSE infected cattle are introduced into the United States. Accordingly, FDA has tentatively concluded that it should propose removing SRMs from all animal feed to adequately control the risks associated with cross contamination throughout feed manufacture and distribution and with intentional or unintentional misfeeding on the farm. FDA is currently working on a proposal to accomplish this goal.

To assist FDA in completing that proposal, FDA seeks comment on the following questions:

3. What information, especially scientific data, is available to support or refute the assertion that removing SRMs from all animal feed is necessary to effectively reduce the risks of cross-contamination of ruminant feed or of feeding errors on the farm? What information is available on the occurrence of on-farm feeding errors or cross-contamination of ruminant feed with prohibited material?

4. If SRMs are prohibited from animal feed, should the list of SRMs be the same list as for human food? What information is available to support having two different lists?

5. What methods are available for verifying that a feed or feed ingredient does not contain SRMs?

6. If SRMs are prohibited from animal feed, what requirements (labeling, marking, denaturing) should be implemented to prevent cross-contamination between SRM-free rendered material and material rendered from SRMs?

7. What would be the economic and environmental impacts of prohibiting SRMs from use in all animal feed?

8. What data are available on the extent of direct human exposure (contact, ingestion) to animal feed, including pet food? To the degree such exposure may occur, is it a relevant concern for supporting SRM removal from all animal feed?

Cross Contamination

The ''Feed restrictions'' section of the IRT report also stated:

> Cross contamination must be prevented throughout the feed chain, from reception and transportation of feed ingredients, during the manufacturing process, through transportation and storage of finished feed, and on farm where mixing, blending, and feeding will occur. [p. 6]

The 1997 feed rule required manufacturers and distributors that handle both prohibited and nonprohibited material to control cross contamination by either: (1) Maintaining separate equipment or facilities; or (2) using clean-out procedures or other means adequate to prevent carry-over of prohibited material into feed for ruminant animals. In response to the finding of a BSE-positive cow in Washington State, FDA announced its intention to strengthen measures to prevent cross contamination by requiring dedicated equipment or facilities. However, in light of the IRT's recommendations, if SRMs are prohibited in all animal feed, dedicated facilities may no longer be necessary to reduce the risk associated with cross contamination. Therefore, FDA is reevaluating the need for requiring dedicated facilities.

FDA seeks comment on the following questions:

9. What information, especially scientific data, is available to show that dedicated facilities, equipment, storage, and transportation are necessary to ensure that cross contamination is prevented? If FDA were to prohibit SRMs from being used in animal feed, would there be a need to require dedicated facilities, equipment, storage, and transportation? If so, what would be the scientific basis for such a prohibition?

10. What would be the economic and environmental impacts of requiring dedicated facilities, equipment, storage, and transportation?

11. What information, especially scientific data, is available to demonstrate that clean-out would provide adequate protection against cross contamination if SRMs are excluded from all animal feed?

All Mammalian and Avian Protein

As reported in the ''Feed restrictions'' section of the IRT report:

> The [IRT] recommends that the current feed ban be extended to exclude all mammalian and poultry protein from all ruminant feeds, and that this ban as well as measures to prevent cross contamination be strongly enforced. This recommendation must be enforced through an inspection program including sampling and testing of feed. [p. 6]

As noted previously, although the IRT agreed that ''science would support the feed bans limited to the prohibition of ruminant derived MBM in ruminant feed,'' the IRT stated that ''practical difficulties of enforcement demand more pragmatic and effective solutions.'' [p. 6] In particular, the IRT said:

> The prohibition of the use of all MBM (including avian) in ruminant feed is justified partly due to the issues of cross contamination as well as the current problems in differentiating mammalian and avian MBM. It also prevents the inclusion of ruminant derived protein contained within the lumen of porcine or avian intestines at slaughter in animal feed that may be used for ruminants. [p. 6]

Although the IRT discussed the problems with rendered MBM, the IRT report did not specifically address the potential risks from other mammalian and avian protein, such as milk, blood, gelatin, and tallow (rendered fat) that may contain small amounts of protein. The 1997 final rule, which banned the use of most mammalian protein in ruminant feed, did not include these materials in the definition of animal proteins prohibited in ruminant feed because they were not considered to pose a risk of BSE transmission. Prior to release of the IRT recommendations, FDA had announced its intentions to eliminate exemptions in the current ruminant feed rule for blood and blood products and plate waste, and to prohibit the practice of incorporating poultry litter into ruminant feed. FDA is now evaluating whether the announced measures need to be modified in light of the IRT recommendations. With respect to tallow, the OIE categorizes tallow with a maximum level of insoluble impurities of 0.15 percent as protein-free tallow and recommends that tallow that meets this standard be freely traded regardless of the BSE status of the country of origin.

FDA seeks comment on the following questions:

12. What information, especially scientific data, supports banning all mammalian and avian MBM in ruminant feed?

13. If SRMs are required to be removed from all animal feed, what information, especially scientific data, is available to support the necessity to also prohibit all mammalian and avian MBM from ruminant feed, or to otherwise amend the existing ruminant feed rule?

14. What would be the economic and environmental impacts of prohibiting all mammalian and avian MBM from ruminant feed?

15. Is there scientific evidence to show that the use of bovine blood or blood products in feed poses a risk of BSE transmission in cattle and other ruminants?

16. What information is available to show that plate waste poses a risk of BSE transmission in cattle and other ruminants?

17. If FDA were to prohibit SRMs from being used in animal feed, would there be a need to prohibit the use of poultry litter in ruminant feed? If so, what would be the scientific basis for such a prohibition?

18. What would be the economic and environmental impacts of prohibiting bovine blood or blood products, plate waste, or poultry litter from ruminant feed?

19. Is there any information, especially scientific data, showing that tallow derived from the rendering of SRMs, dead stock, and non-ambulatory disabled cattle poses a significant risk of BSE transmission if the insoluble impurities level in the tallow is less than 0.15 percent?

Non-Ambulatory (Downer) Cattle

In the ''Non-ambulatory (downer) cows'' section of the report, the IRT noted the need to prevent potentially infective tissues from entering the feed chain. [p. 4] In addition to downer cattle, FDA is concerned about cattle that die on the farm or are killed for humane reasons (*i.e.*, dead stock) because they are also among the highest risk cattle population. Furthermore, little, if any, infrastructure is in place for removal of SRMs from cattle that are not slaughtered as part of the routine process that occurs at government inspected slaughter establishments. As previously discussed, the Harvard-Tuskegee Study showed that prohibiting rendering of animals that die on the farm would reduce the potential cases of BSE following hypothetical exposure by a further 82 percent from the base case scenario. Thus, FDA is evaluating the need to prohibit materials from non-ambulatory disabled cattle and dead stock from use in all animal feed.

FDA seeks comment on the following questions:

20. Can SRMs be effectively removed from dead stock and non-ambulatory disabled cattle so that the remaining materials can be used in animal feed, or is it necessary to prohibit the entire carcass from dead stock and non-ambulatory disabled cattle from use in all animal feed?

21. What methods are available for verifying that a feed or feed ingredient does not contain materials from dead stock and non-ambulatory disabled cattle?

22. What would be the economic and environmental impacts of prohibiting materials from dead stock and non-ambulatory disabled cattle from use in all animal feed?

Disposal of SRMs and Non-Ambulatory Disabled Cattle

Additionally, in the ''Feed restrictions'' section of the report, the IRT stated:

> Recognising the absence of an established infrastructure for the separation and disposal of SRM or MBM the subcommittee accepted that a staged approach may be necessary for implementation. Exclusion and destruction of such a high volume of raw material is a massive burden on all countries currently affected by BSE. Given the susceptibility of cattle to low dose exposure, and the fact that no processing system exists at present to guarantee destruction of infectivity in commercial processes, it is probable that restoration of traditional uses in feed may be impossible. More radical and innovative solutions are required to enable the safe use of such materials in future. This should include adding value through their use for purposes other than the manufacture of feed and fertilisers (*e.g.* as a fuel source.) [p. 6]

USDA's Rural Business-Cooperative Service announced on May 18, 2004, a pilot project to provide guaranteed loans to rural small businesses for developing renewable energy systems primarily through use of specified risk materials, non-ambulatory cattle, or other cattle deemed to be at risk of carrying BSE (69 FR 28111–29119). Applications must be received by August 16, 2004.

APHIS welcomes comment on the following question:

23. What other innovative solutions could be explored?

D. Animal Identification (Traceability)

In the section of the IRT report headed, ''Traceability,'' the IRT acknowledged that the U.S. Government has ''recognized the importance of effective identification and traceability systems, that have value not only for the cost-effective and rapid tracing of animals for culling, but also for containment of contagious diseases.'' [p. 6] The IRT ''encourages the implementation of a national identification system that is appropriate to North American farming.'' [p. 6]

As discussed in section III, *The Case in Washington State and U.S. Actions in Response,* under *Animal Identification (Traceability),* APHIS is implementing a national animal identification system.

The national animal identification system will allow the Federal Government to trace back and trace forward animals potentially exposed to a disease of concern. Traceback refers to the ability to track an animal's location over its lifespan and the ability to determine which animals may have been in contact with the diseased animal or shared a contaminated feed supply. Trace forward data provides locations of animals moved out of the premises of concern that may have been exposed to the disease. When fully implemented, the national animal identification system calls for a trace to be completed within 48 hours of detecting a disease, thereby helping to contain an outbreak. The ability to achieve the 48-hour goal is directly related to the completeness of animal movement data that is reported to the national system. Developing and establishing all components of this national system present significant challenges.

APHIS recognizes the need to be able to ensure that data provided by producers is protected, and that all components of the system are in place and have been tested, before making the system mandatory. APHIS also recognizes that market forces will affect producer involvement (*e.g.*, some establishments may begin to accept only animals that are identified under the national system).

APHIS invites comment on the following questions:

24. When and under what circumstances should the program transition from voluntary to mandatory?

25. What species should be covered, both initially and in the longer term? Specifically, should the initial emphasis be on cattle, or also cover other species? If so which? Which species should be covered by the program when it is fully implemented? What priority should be given to including different species?

E. Education

In the section of the IRT report headed, ''Education,'' the IRT stated:

> BSE educational programs must be designed to meet the needs of multiple audiences with variable levels of scientific training. Countries around the world have routinely underestimated the need for a wide variety of educational materials and training techniques to meet both technical and non-technical audiences. The [IRT] recommends that extensive education and training materials be developed in collaboration with academic, professional, trade and consumer organizations so that scientifically sound and accurate information about the nature of BSE and the importance of aggressive prevention and control strategies can be disseminated widely and incorporated into the curricula of schools, college, universities and professional continuing education programs. As traceability, transparency and access to current information increases, so does consumer confidence and effectiveness of the control and prevention measures. [pp. 6–7]

FDA, FSIS, and APHIS continue to develop educational and training materials. BSE became a reportable

disease in the United States in 1986. In May 1990, USDA began educational outreach to veterinarians, cattle producers, and laboratory diagnosticians regarding the clinical signs and diagnosis of BSE. These activities have been broadened both in terms or scope and targeted audiences in recent years, to include awareness programs for personnel involved in the transportation, marketing, and slaughter of cattle, as well as the general public, through various means, including frequent briefings and press conferences, fact sheets, videotapes, and information on its web site. FDA has conducted training for Federal and State investigators conducting inspections of feed mills, rendering establishments, and other regulated facilities, developed educational materials, including a CD, for investigators and the industry on the inspection process, developed guidance documents for each of the industry segments affected by the regulations, available on the Internet and in Spanish; and collaborated with industry organizations to develop educational materials for specific audiences.

All three agencies welcome comment on the following questions:

26. How can training and educational materials be designed or improved to meet the needs of multiple audiences with variable levels of scientific training?

27. How can the Federal Government increase access to these materials?

VI. Other Considerations

A. Animal Feed Measures

FDA believes it is necessary to consider the current state of technology when developing new requirements for animal feeds. The IRT report cites the limitations of sampling techniques and test sensitivity as the rationale, in part, for why further restrictions are needed to prevent cross contamination. The IRT noted:

> If at some point it becomes possible through other means (*e.g.*, inspection, testing, and enforcement) to achieve the equivalent result of assuring that no ruminant proteins are ingested by ruminants, then exclusion of all mammalian protein from feed for ruminants may not be required.

FDA is interested in the impact of technology development on all possible new requirements and seeks comment on the following questions:

28. Should FDA include exemptions to any new requirements to take into account the future development of new technologies or test methods that would establish that feed does not present a risk of BSE to ruminants?

29. If so, what process should FDA use to determine that the technologies or test methods are practical for use by the feed industry and ruminant feeders and provide scientifically valid and reliable results?

B. FDA Authority

FDA requests comments on the following questions:

30. Do FDA's existing authorities under the Federal Food, Drug, and Cosmetic Act (that address food adulteration and misbranding) and under the Public Health Service Act (that address the prevention and spread of communicable diseases) provide a legal basis to ban the use of SRMs and other cattle material in nonruminant animal feed (*e.g.*, feed for horses, pigs, poultry, etc.) notwithstanding that such materials have not been shown to pose a direct risk to nonruminant animals? More specifically, under FDA's existing legal authorities, would the potential occurrence of on-farm feeding errors, of cross contamination of ruminant feed with SRMs and other cattle material, or of human exposure to nonruminant feed (including pet food) provide a basis to ban SRMs and other cattle material from all animal feed?

31. Are there other, related legal issues on which FDA should focus?

C. Sanitation and Cross Contamination

As discussed in section III, *The Case in Washington State and U.S. Actions in Response,* under *Safeguards on Food and Feed Supplies,* to ensure that that establishments that slaughter or process cattle that are 30 months of age or older, as well as cattle that are younger than 30 months of age, are taking appropriate actions to prevent contamination of edible carcasses and parts with SRMs, FSIS has developed procedures for its inspection program personnel to verify that the equipment (*e.g.*, saws and knives) is properly cleaned and sanitized between carcasses or parts. FSIS also issued a press release during the comment period for its SRM rule to specifically solicit public comment on methods used to prevent cross contamination of carcasses with SRMs. One comment has suggested that FSIS require dedicated equipment for the removal and severing of SRMs, noting that the Canadian Food Inspection Agency requires that Canadian establishments use dedicated knives to sever the spinal cord of cattle 30 months of age and older. Also, because cattle infected with BSE are more likely to contain infectious levels of the BSE agent if they are 30 months of age and older, equipment that comes in contact with SRMs exclusively from cattle 30 months of age and older could potentially become contaminated with high levels of the BSE agent and come in contact with edible tissue. Therefore, FSIS is evaluating the need for additional sanitation requirements to prevent cross contamination of edible portions of carcasses with SRMs in establishments that predominantly slaughter cattle 30 months of age and older.

FSIS welcomes comment, especially scientific information, on the following questions:

32. What measures are necessary to prevent cross contamination between carcasses?

33. In establishments that predominantly slaughter cattle 30 months of age and older. are additional sanitation requirements necessary to prevent edible portions of carcasses from being contaminated with SRMs?

D. Equivalence

In response to the FSIS rule that prohibits SRMs and non-ambulatory disabled cattle for use in human food, FSIS has received several comments from countries that consider themselves ''BSE free'' requesting that the Agency exempt countries recognized as ''BSE free'' or ''provisionally free'' from the requirements of the interim final rule. According to these countries, their BSE status provides the same level of protection against BSE that is achieved domestically by the provisions in the FSIS interim final rule. Therefore, these countries assert that their BSE status is an ''equivalent sanitary measure.''

Meat and meat products exported to the United States from another nation must meet all sanitary standards applied to meat and meat products produced in the United States. The United States makes determinations of equivalence by evaluating whether foreign food regulatory systems attain the appropriate level of protection provided by our domestic system. Thus, while foreign food regulatory systems need not be identical to the U.S. system, they must employ equivalent sanitary measures that provide the same level of protection against food safety hazards as achieved domestically.

Currently, the prohibition on the use of materials designated as SRMs in FSIS'' SRM rule applies to all such materials, regardless of the BSE status of the country of origin, as does the prohibition on the slaughter of non-ambulatory disabled cattle. However, as discussed earlier in this document, the OIE standards for trade in bovine-derived products, including meat and meat products, take into consideration the BSE risk status of a country or zone.

Therefore, FSIS is evaluating whether the Agency should consider a country's BSE risk when determining whether a country has implemented equivalent sanitary measures to those required by the United States to prevent human exposure to the BSE agent. Issues under consideration by FSIS include whether the Agency should develop and apply its own standards for determining a country's BSE risk; whether it should adopt and apply existing standards; and whether FSIS should conduct its own evaluation to determine a country's BSE risk for purposes of determining equivalence or whether it should rely on a third party evaluation.

Therefore, FSIS requests comments on the following questions:

34. Should FSIS provide an exemption for ''BSE free'' countries or countries with some other low-risk BSE designation?

35. If FSIS were to exempt ''BSE free'' countries from the provisions of the SRM rule, what standards should the Agency apply to determine a country's BSE status?

36. How would FSIS determine that country meets such standards? For example, should it rely on third party evaluations, such as the OIE, or conduct its own evaluation?

In the interim final rule on prohibited cattle material in human food and cosmetics published in the Rules and Regulations section of this **Federal Register**, FDA also has requested comments on standards to apply when determining another country's BSE status, providing an exemption for ''BSE-free'' countries, and how to determine that countries meet any standards that might be developed. FDA will work with USDA in developing a harmonized U.S. position for dealing with these issues.

VII. Submission of Public Comments

APHIS, FSIS, and FDA invite public comment on the issues and questions presented in this ANPRM. To facilitate each agency's review of comments, we ask that comments be submitted to the agency (APHIS, FSIS or FDA) that is seeking comment on the particular question the comment addresses. The agency or agencies that wish to receive comments on a particular issue are identified before each question or set of questions in sections V or VI. Comments should be submitted to all agencies only when comments address general questions or issues applicable to all agencies. Comment submissions should include the appropriate agency docket number(s). Please refer to the docket numbers and instructions for submitting comments in the **ADDRESSES** section at the beginning of this document.

Please also note that the comment periods established by each agency are different. FDA intends to issue a proposed rule on animal feeds subsequent to publication of this ANPRM. To facilitate FDA's consideration of those comments in developing the proposed rule, please submit comments specific to the FDA issues and questions to FDA prior to close of the 30-day comment period listed for FDA in the **DATES** section of this document. APHIS and FSIS will accept comments for 60 days, as provided in the **DATES** section of this document.

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 321, 342, 343, 348, 371, and 601–695.

Done in Washington, DC, this 8th day of July, 2004.

Bill Hawks,

Under Secretary, Marketing and Regulatory Programs, USDA.

Elsa Murano,

Under Secretary, Food Safety, USDA.

Dated: Done in Washington, DC, this 8th day of July, 2004.

Lester M. Crawford,

Acting Commissioner of Food and Drugs.

[FR Doc. 04–15882 Filed 7–9–04; 11:00 am]

BILLING CODE 3410–34–P; 3410–DM–P; 4160–01–P

Federal Register

Wednesday,
July 14, 2004

Part IV

Securities and Exchange Commission

17 CFR Part 247
Limitations on Affiliate Marketing (Regulation S–AM); Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 247

[Release Nos. 34–49985, IC–26494, IA–2259; File No. S7–29–04]

RIN 3235–AJ24

Limitations on Affiliate Marketing (Regulation S–AM)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing for comment proposed rules to implement the affiliate marketing provisions in Section 214 of the Fair and Accurate Credit Transactions Act of 2003, which amends the Fair Credit Reporting Act. Section 214 requires the Commission and other Federal agencies to adopt rules implementing limitations on a person's use of certain information received from an affiliate to solicit a consumer for marketing purposes, unless the consumer has been given notice and an opportunity to opt out of having the information used for those purposes.

DATES: Comments should be received on or before August 13, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–29–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–29–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed/shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: For information regarding the proposed rules as they relate to brokers, dealers, or transfer agents contact Catherine McGuire, Chief Counsel, Brian Bussey, Assistant Chief Counsel, or Tara Prigge, Attorney, Office of Chief Counsel, at the Division of Market Regulation, (202) 942–0073, or regarding the proposed rules as they relate to investment companies or investment advisers, contact Penelope W. Saltzman, Branch Chief, or Hugh Lutz, Attorney, Office of Regulatory Policy, at the Division of Investment Management, (202) 942–0690, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment Regulation S–AM, 17 CFR 247.1 through 247.27, under Section 214 of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'').[1]

Table of Contents

I. Background

The FACT Act was signed into law on December 4, 2003.[2] Section 214 of the FACT Act adds a new Section 624 to the Fair Credit Reporting Act (''FCRA'').[3] This new provision gives consumers the right to restrict a person from making marketing solicitations to them using certain information about them obtained from the person's affiliate.

Section 214 requires the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision (collectively, the ''Banking Agencies''), the National Credit Union Administration, the Federal Trade Commission (collectively with the Banking Agencies, the ''Agencies''), and the Commission, in consultation and coordination with one another, to issue implementing rules. These rules must be issued in final form not later than nine months after the date of enactment,[4] and must become effective not later than six months after issuance.[5]

Commission staff worked with staff from the Agencies in developing proposed rules to implement Section 214. As required by Section 214, proposed Regulation S–AM is, to the extent possible, consistent with and comparable to the regulations proposed by the Agencies.[6] While the provisions in proposed Regulation S–AM, in general, are substantially similar to those proposed by the Agencies, some definitions and examples differ in order to provide more meaningful guidance to the persons subject to the Commission's jurisdiction.

II. Explanation of the Proposed Rules

New Section 624 of the FCRA generally establishes conditions that must be met before a person may use certain information for marketing purposes if the information is obtained from an affiliate. Before a person may make marketing solicitations to a consumer using certain information about that consumer, the consumer must be given notice and a reasonable opportunity to opt out of having the information used for this purpose. Thus, Section 624 governs the use of certain information by an affiliate, and not the sharing of information with or among affiliates.[7]

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[1] Pub. L. 108–159, section 214, 117 Stat. 1952 (2003).

[2] *Id.*

[3] 15 U.S.C. 1681–1681x. The FCRA sets standards for the collection, communication, and use of information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

A portion of Section 214 of the FACT Act amends the FCRA to add a new Section 624, while other provisions of Section 214 are not incorporated into the FCRA. Throughout this release, references to ''Section 214 of the FACT Act'' or ''Section 624 of the FCRA'' are used depending on the portion of Section 214 to which the reference relates.

[4] *See* FACT Act sections 214(b)(2) and (3), 15 U.S.C. 1681s–3 note.

[5] *See* FACT Act section 214(b)(4), 15 U.S.C. 1681s–3 note.

[6] The Banking Agencies and the National Credit Union Administration are publishing a joint release proposing rules to implement Section 214 of the FACT Act (the ''Joint Proposal''). Citations to particular provisions of the ''Joint Proposal'' refer to the numbering system used in the proposal of the Board of Governors of the Federal Reserve System. The Federal Trade Commission has already published proposed rules to implement Section 214 (the ''FTC Proposal''). *See* Affiliate Marketing Rule, 69 FR 33324 (June 15, 2004). The Agencies' releases will be available at *www.regulations.gov.*

[7] In general, Section 603(d)(2)(A) of the FCRA governs the sharing of information with and among

Responsibility for Providing Notice and an Opportunity To Opt Out

Section 624(a)(1) of the FCRA directs that a person that receives ''eligibility information'' [8] about a consumer from its affiliate (the ''receiving affiliate'') may not use the information to make a marketing solicitation to that consumer unless the consumer has been provided with notice of the information-sharing and given a reasonable opportunity to opt out of having the information used for marketing. The statute does not specify whether the receiving affiliate or the affiliate that communicates the eligibility information (the ''communicating affiliate'') must provide the consumer with notice and the opportunity to opt out.

Arguments can be made for imposing this responsibility on either affiliate. Because Section 624 is drafted as a prohibition on the use of information by the receiving affiliate, and does not explicitly impose any affirmative duty on the communicating affiliate, the receiving affiliate could be required to take responsibility for giving the notice. However, the language in Section 624(a)(1)(A), which provides that the notice to the consumer must state that information ''may be communicated'' among affiliates for the purpose of making marketing solicitations,[9] suggests the communicating affiliate would provide the notice before sharing the information. This latter view gains support from other statutory provisions. For example, Section 624(b) [10] allows for the combination of affiliate marketing opt-out notices with other notices required by law, which may include privacy notices that must be sent by communicating affiliates under the Gramm-Leach-Bliley Act (''GLB Act'').[11] Similarly, Section 214(b)(3) of the FACT Act directs the Agencies and the Commission to consider existing affiliate sharing notification practices under Section 603(d)(2)(A)(iii) of the FCRA [12]—which are provided by the affiliate that already has a relationship with the consumer—and to allow for coordination and consolidation of the affiliate sharing and affiliate marketing notices.[13] These provisions, taken together, suggest that the communicating affiliate should give the notice.

We, therefore, propose that the communicating affiliate would be responsible for satisfying the notice requirement where applicable. Under the proposed rule, the communicating affiliate would have the flexibility either to give the notice directly or through an agent, or to provide a joint notice in conjunction with one or more other affiliates. This approach should facilitate the use of a single notice among affiliates. At the same time, it would ensure that the notice is not provided solely by the receiving affiliate, from which the consumer may not expect to receive important notices regarding the consumer's opt-out rights. We request comment on this approach generally, and whether it would provide consumers with reasonable notice. We also invite comment on whether the receiving affiliate should be permitted to give the notice solely on its own behalf. Commenters are also invited to discuss whether a notice solely from the receiving affiliate would effectively be a marketing solicitation because it constitutes that affiliate's first contact with the consumer. In addition, we invite comment on whether a notice from the receiving affiliate would be as effective as a notice from the communicating affiliate.

Scope of Coverage

In defining the circumstances in which the notice and opt-out requirements apply, the proposal focuses on the communication of ''eligibility information'' among affiliates. The proposed definition of ''eligibility information'' would encompass any information that, if communicated, would be a ''consumer report,'' but for the FCRA's statutory exclusions for the sharing of transaction or experience information and for the sharing of information among affiliates.[14] Section 603(d)(1) of the FCRA defines a ''consumer report'' as any written, oral, or other communication by a consumer reporting agency of any information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, employment purposes, or any other purpose authorized in Section 604 of the FCRA.[15] We invite comment on whether the proposed definition of ''eligibility information'' appropriately reflects the scope of coverage of the FACT Act and provides meaningful guidance to affected persons.[16]

Section 624(a)(4) of the FCRA also limits the scope of the notice and opt-out requirements by specifying that they do not apply when: (1) The affiliate receiving the information has a pre-existing business relationship with the consumer; (2) the information is used to perform services for another affiliate (subject to certain conditions); (3) the information is used in response to a communication initiated by the consumer; or (4) the information is used to make a solicitation that has been authorized or requested by the consumer.[17] We have incorporated each of these statutory exceptions into the proposed rules. The terms ''solicitation'' and ''pre-existing business relationship'' are defined in Section 624(d) of the FCRA and are discussed in detail in Section III below. Section 624(d) of the FCRA authorizes the Commission to prescribe additional circumstances that would constitute a ''pre-existing business relationship'' or would not constitute a ''solicitation.'' [18] We seek

affiliates. As discussed in note 3 above, the FCRA sets standards for the collection, communication, and use of information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. The FCRA provides that a person who communicates these forms of information to others could become a ''consumer reporting agency,'' which is subject to substantial statutory obligations. However, a person may communicate information about its own ''transactions or experiences'' with a consumer without becoming a consumer reporting agency. This transaction or experience information may be communicated among affiliated persons without any of them becoming a consumer reporting agency. *See* FCRA sections 603(d)(2)(A)(i) and (ii), 15 U.S.C. 1681a(d)(2)(A)(i) and (ii).

The FCRA also allows that a person may communicate to its affiliates information other than transaction or experience information without becoming a consumer reporting agency if the person first gives the consumer a clear and conspicuous notice that such information may be communicated to its affiliates and an opportunity to ''opt out,'' or block the person from sharing the information. *See* FCRA section 603(d)(2)(A)(iii), 15 U.S.C. 1681a(d)(2)(A)(iii). There is some overlap between this ''affiliate sharing'' provision of the FCRA and the ''affiliate marketing'' rules that we currently propose. The two provisions are distinct, however, and they serve different purposes. Nothing in these proposed rules regarding the limitations on affiliate marketing under Section 624 of the FCRA would supersede or replace the affiliate sharing notice and opt-out requirement contained in Section 603(d)(2)(A)(iii) of the FCRA.

[8] ''Eligibility information'' is defined in proposed paragraph (i) of § 247.3. See the discussion below.

[9] 15 U.S.C. 1681s–3(a)(1)(A).

[10] 15 U.S.C. 1681s–3(b).

[11] Pub. L. 106–102, 113 Stat. 1338 (1999).

[12] *See* note 7 above for a discussion of this section of the FCRA.

[13] *See* 15 U.S.C. 1681s–3 note.

[14] *See* note 7 above, discussing 15 U.S.C. 1681a(d)(2)(A).

[15] 15 U.S.C. 1681a(d)(1).

[16] Section 624(a)(1) refers to a ''communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A)'' of the FCRA.

[17] 15 U.S.C. 1681s–3(a)(4).

[18] 15 U.S.C. 1681s–3(d).

comment on any additional circumstances that the Commission should consider.

Duration of Opt-Out

Section 624(a)(3) of the FCRA provides that a consumer's affiliate marketing opt-out election shall be effective for at least five years.[19] Accordingly, the proposal provides that a consumer's opt-out election would be valid for a period of at least five years (the ''opt-out period''), beginning as soon as reasonably practicable after the consumer's opt-out election is received, unless the consumer revokes the election before the opt-out period has expired. When a consumer opts out, unless a statutory exception applies, a receiving affiliate would be unable to make or send marketing solicitations to that consumer based on his or her eligibility information during the opt-out period.

As described below, an extension notice would be provided to the consumer at the end of the opt-out period if the receiving affiliate wishes to make marketing solicitations. Affiliated persons may wish to avoid the cost and burden of tracking five-year consumer opt-out periods with varying start and end dates, and delivering extension notices to each consumer at the appropriate time, by choosing to treat a consumer's opt-out election as effective for a period longer than five years, including indefinitely.[20] A person that chooses to honor a consumer's opt-out election for more than five years would not violate the proposed rules.

III. Section-by-Section Analysis

Section 247.1 Purpose and Scope

Proposed paragraph (a) of § 247.1 of Regulation S–AM specifically sets forth that the purpose of the proposed rules is to implement the affiliate marketing provisions of the FACT Act. Proposed paragraph (b) of § 247.1 lists the entities to which proposed Regulation S–AM would apply.

The FACT Act does not specifically identify which entities would be subject to the rules prescribed by the Commission.[21] Congress' inclusion of the Commission as one of the agencies required to adopt implementing regulations suggests that Congress intended that our rules apply to brokers, dealers, and investment companies, as well as to investment advisers and transfer agents that are registered with the Commission (respectively, ''registered investment advisers'' and ''registered transfer agents,'' and, collectively with brokers, dealers, and investment companies, ''Covered Persons''). These entities are referred to as ''you'' throughout the proposed rules. However, broker-dealers required to register by notice with the Commission under Section 15(b)(11) of the Securities Exchange Act of 1934 (''Exchange Act'') for the purpose of conducting business in security futures products (''notice-registered broker-dealers'') would be excluded from the scope of the rules.[22]

Section 247.2 Examples

Given the wide range of possible situations covered by Section 624 of the FCRA, the proposal includes general rules and provides more specific examples. These examples are intended to provide guidance about how the rules are likely to apply in specific situations, and to assist persons subject to the rules in understanding and complying with them. Proposed § 247.2 describes how examples are used in the proposed rules, and explains that the examples are not exclusive.[23] Rather, examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise. We request comment on proposed § 247.2.

Section 247.3 Definitions

Proposed § 247.3 defines the following key terms used in proposed Regulation S–AM:

Affiliate

Proposed paragraph (a) of § 247.3 defines an ''affiliate'' of a Covered Person as any person that is related by common ownership or common corporate control with the Covered Person. The proposed rules also provide that a Covered Person would be considered an affiliate of another person for purposes of these rules if: (1) The other person is regulated under Section 214 of the FACT Act by one of the Agencies and (2) the rules adopted by that Agency treat the Covered Person as an affiliate of the other person.[24]

The proposed definition of affiliate follows the definition of ''affiliates'' in Section 2 of the FACT Act: ''persons that are related by common ownership or affiliated by corporate control.''[25] A portion of the proposed definition incorporates the defined term ''control,'' which applies exclusively to control of a ''company.'' We invite comment on this proposed definition of ''affiliate.''

Broker[26]

Proposed paragraph (b) of § 247.3 defines ''broker'' to have the same meaning as in Section 3(a)(4) of the Exchange Act,[27] regardless of whether the person is registered under Section 15(b) of the Exchange Act.[28] The term would include a municipal securities broker as defined in Section 3(a)(31) of the Exchange Act,[29] regardless of

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[19] 15 U.S.C. 1681s–3(a)(3).

[20] Of course, a consumer who wishes to receive marketing materials may revoke his or her opt-out election at any time before the opt-out period expires.

[21] Section 214 of the FACT Act directs that implementing regulations must be prescribed by the ''Federal banking agencies, the National Credit Union Administration, and the [Federal Trade] Commission, with respect to the entities that are subject to their respective enforcement authority under Section 621 of the Fair Credit Reporting Act and the Securities and Exchange Commission * * *'' 15 U.S.C. 1681s–3 note. Section 621 of FCRA grants enforcement authority to the Federal Trade Commission for all persons subject to FCRA ''except to the extent that enforcement * * * is specifically committed to some other government agency under subsection (b)'' of Section 621. 15 U.S.C. 1681s. The Commission is not one of the agencies included under subsection (b). 15 U.S.C. 1681s(b). The Commission was added to the list of federal agencies required to adopt implementing regulations under Section 214 of the FACT Act in conference committee. There is no legislative history on this issue.

[22] See the proposed definitions of ''broker'' and ''dealer'' below. Notice-registered broker-dealers are subject to primary oversight by the Commodity Futures Trading Commission (''CFTC'') and are exempted from all but the core provisions of the laws administered by the Commission. We interpret Congress' exclusion of the CFTC from the list of financial regulators required to adopt implementing regulations under Section 214(b) of the FACT Act to mean that Congress did not intend for the Commission's rules under the FACT Act to apply to entities subject to primary oversight by the CFTC.

[23] The Joint Proposal provides that, to the extent applicable, compliance with an example would constitute compliance with the rule. *See, e.g.*, Joint Proposal, § 222.2. The examples in our proposed rules, however, would not provide the same safe harbor. The examples are intended to describe the broad outlines of ordinary situations that would constitute compliance with the applicable rule. However, the specific facts and circumstances relating to each particular situation would determine whether compliance with an example constitutes compliance with the rule.

[24] Proposed § 247.3(a)(1)–(2). This provision is designed to prevent the disparate treatment of affiliates within a holding company structure. Without this provision, a broker-dealer in a bank holding company structure might not be considered affiliated with another entity in that organization under the Commission's proposed rules, even though the two entities would be considered affiliated under the Joint Proposal.

[25] The FACT Act and the FCRA contain slightly varied definitions of ''affiliate.'' ''Affiliate'' is not a defined term in the FCRA, but various provisions of the FCRA refer to persons ''related by common ownership or affiliated by common corporate control,'' ''related by common ownership or affiliated by common corporate control,'' or ''affiliated by common ownership or control.'' *See, e.g.*, sections 603(d)(2), 615(b)(2), and 625(b). In contrast, the GLB Act defines ''affiliate'' to mean ''any company that controls, is controlled by, or is under common control with'' another. The proposed definition is intended to harmonize the various definitions of ''affiliate'' in the FACT Act and the FCRA.

[26] The Joint Proposal does not include a definition of ''broker.''

[27] 15 U.S.C. 78(c)(a)(4).

[28] 15 U.S.C. 78*o*(b).

[29] 15 U.S.C. 78c(a)(31).

whether it is registered under Section 15(b) of the Exchange Act.[30] In addition, the term would include a government securities broker as defined in Section 3(a)(43) of the Exchange Act [31] (other than a bank as defined in Section 3(a)(6) of the Exchange Act),[32] regardless of whether it is registered under Section 15(b) or 15C(a)(2) of the Exchange Act.[33] The proposed definition specifically excludes a broker registered by notice with the Commission under Section 15(b)(11) of the Exchange Act [34] for the purpose of conducting business in security futures products.[35]

Clear and Conspicuous

Proposed paragraph (c) of § 247.3 defines ''clear and conspicuous'' to mean reasonably understandable and designed to call attention to the nature and significance of the information presented. While persons subject to proposed Regulation S–AM would have flexibility in determining how best to meet the clear and conspicuous standard, they may wish to consider a number of methods to make their notices clear and conspicuous.

A notice or disclosure could be made reasonably understandable through methods that include but are not limited to:

- Using clear and concise sentences, paragraphs, and sections;
- Using short explanatory sentences;
- Using bullet lists;
- Using definite, concrete, everyday words;
- Using active voice;
- Avoiding multiple negatives;
- Avoiding legal and highly technical business terminology; and
- Avoiding explanations that are imprecise and are readily subject to different interpretations.

A notice or disclosure could also use various design methods to call attention to the nature and significance of the information in it, including but not limited to:

- Using a plain-language heading;
- Using a typeface and type size that are easy to read;
- Using wide margins and ample line spacing; and
- Using boldface or italics for key words.

Under the proposal, persons that choose to provide the notice or disclosure by using a Web page [36] could use text or visual cues to encourage the reader to scroll down the page if necessary to view the entire notice. They also could take steps to ensure that other elements on the Web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice. Persons that would be subject to proposed Regulation S–AM would be encouraged to use readability testing or similar measures to ensure that their notices and disclosures are understandable to consumers.

To be ''clear and conspicuous,'' a notice would need to be designed to call attention to the nature and significance of the information in it. When a notice or disclosure is combined with other information, design techniques to accomplish this could include the use of distinctive type sizes, styles, fonts, paragraphs, headings, graphic devices, groupings, or other devices. It would be unnecessary, however, to use distinctive features to differentiate an affiliate marketing opt-out notice from other components of a required disclosure (such as a privacy notice under the GLB Act that includes several opt-out disclosures in a single notice).[37]

We recognize that it might not be feasible to employ all of the methods described above all of the time. For example, a person might need to use legal terminology, rather than everyday words, in some circumstances in order to provide a precise explanation. Although persons subject to proposed Regulation S–AM would not be required to consider the practices described above in designing their notices or disclosures, we encourage them to do so. We request comment on the proposed definition of ''clear and conspicuous.''

Commission [38]

Proposed paragraph (d) of § 247.3 defines ''Commission'' to mean the Securities and Exchange Commission.

Company

Proposed paragraph (e) of § 247.3 defines ''company,'' as used in the definition of ''affiliate,'' as any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

Consumer

Proposed paragraph (f) of § 247.3 defines ''consumer'' to mean an individual, which follows the statutory definition in Section 603(c) of the FCRA.[39] For purposes of this proposed definition, an individual acting through a legal representative would qualify as a consumer.

Control

Proposed paragraph (g) of § 247.3 defines ''control'' for purposes of Covered Persons to mean the power to exercise a controlling influence over the management or policies of a company, whether through ownership of securities, by contract, or otherwise.[40] Ownership of more than 25 percent of a company's voting securities would create a presumption of control of the company.[41] This definition would be used to determine when companies are affiliated,[42] and would result in financial institutions being considered affiliates regardless of whether the control is exercised by a company or an individual.[43] We request comment on this proposed definition.

Dealer [44]

Proposed paragraph (h) of § 247.3 defines ''dealer'' to have the same meaning as in Section 3(a)(5) of the Exchange Act,[45] regardless of whether the dealer is registered under Section

[30] 15 U.S.C. 78*o*(b).

[31] 15 U.S.C. 78c(a)(43).

[32] 15 U.S.C. 78c(a)(6). For purposes of this definition and the definition of ''dealer'' (*see* proposed § 247.3(h)), the term ''bank'' would not include a foreign bank (as that term is defined in Section 1(b)(7) the International Banking Act of 1978, 12 U.S.C. 3101(7)) or a savings association (as defined in Section 3(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)) the deposits of which are insured by the Federal Deposit Insurance Corporation.

[33] 15 U.S.C. 78*o*(b), 78*o*–5(a)(2).

[34] 15 U.S.C. 78o(b)(11).

[35] See note 22 above, discussing the applicability of the proposed rules to notice-registered broker-dealers.

[36] See the discussion of § 247.24 below for a description of requirements for the electronic delivery of notices.

[37] Nothing in the clear and conspicuous standard requires an affiliate marketing opt-out notice to be segregated when combined with a privacy notice under the GLB Act or with other required disclosures.

[38] The Joint Proposal does not define the term ''Commission.''

[39] 15 U.S.C. 1681a(c). The definition of ''consumer'' in the FCRA differs from the narrower definition used in the privacy regulations enacted under Title V of the GLB Act. See, *e.g.*, 17 CFR 247.3(g).

[40] See, *e.g.*, 17 CFR 240.19g2–1(b)(2).

[41] This presumption may be rebutted by evidence, but, in the case of an investment company, will continue until the Commission makes a decision to the contrary according to the procedures described in Section 2(a)(9) of the Investment Company Act, 15 U.S.C. 80a–2(a)(9).

[42] *See* the discussion of proposed § 247.3(a) above.

[43] This proposed definition of ''control'' differs from the definition proposed by the Agencies. The Joint Proposal, for example, would define control as ownership of 25 percent of a company's voting securities, control over the election of a majority of the directors, trustees or general partners of the company, or the power to exercise a controlling influence over management or policies of a company, as determined by the particular agency. *See* Joint Proposal, § 222.3(i).

[44] The Joint Proposal does not define the term ''dealer.''

[45] 15 U.S.C. 78c(a)(5).

15(b) of the Exchange Act.[46] The term would include a municipal securities dealer as defined in Section 3(a)(30) of the Exchange Act,[47] other than a bank (as defined in Section 3(a)(6) of the Exchange Act),[48] regardless of whether it is registered under Section 15(b) or 15B(a)(2) of the Exchange Act.[49] In addition, the term would include a government securities dealer as defined in Section 3(a)(44) of the Exchange Act,[50] regardless of whether it is registered under Section 15(b) or 15C(a)(2) of the Exchange Act.[51] The proposed definition specifically would exclude a dealer registered by notice with the Commission under Section 15(b)(11) of the Exchange Act [52] for the purpose of conducting business in security futures products.[53]

Eligibility Information

Proposed paragraph (i) of § 247.3 defines ''eligibility information'' to mean any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in Section 603(d)(2)(A) of the FCRA [54] did not apply. Eligibility information may include any information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, whether that information was obtained from a person's own transactions or experiences with the consumer (*e.g.*, information about a consumer's account history with that person) or from other sources (*e.g.*, information received from credit bureau reports).

FCRA

Proposed paragraph (j) of § 247.3 defines ''FCRA'' to mean the Fair Credit Reporting Act.[55]

GLB Act [56]

Proposed paragraph (k) of § 247.3 defines ''GLB Act'' to mean the Gramm-Leach-Bliley Act.[57]

Investment Adviser [58]

Proposed paragraph (*l*) of § 247.3 defines ''investment adviser'' to have the same meaning as in Section 202(a)(11) of the Investment Advisers Act of 1940 (''Investment Advisers Act'').[59]

Investment Company [60]

Proposed paragraph (m) of § 247.3 defines ''investment company'' to have the same meaning as in Section 3 of the Investment Company Act of 1940 (''Investment Company Act''),[61] regardless of whether the investment company is registered with the Commission.[62] The proposed definition also clarifies that the term includes a separate series of the investment company.

Marketing Solicitation

Proposed paragraph (n) of § 247.3 defines ''marketing solicitation'' to mean marketing initiated by a person to a particular consumer that is based on eligibility information communicated to that person by its affiliate, and that is intended to encourage the consumer to purchase a product or service. The proposed definition includes any form of communication, such as a telemarketing call, direct mail, or electronic mail, that is directed to a specific consumer based on that consumer's eligibility information. The proposed definition does not include communications that are directed at the general public without regard to eligibility information, even if those communications are intended to encourage consumers to purchase products and services. While the proposed definition tracks the definition in Section 624 of the FCRA, it does not follow the statute exactly. Modifications are intended to prevent confusion in the context of the federal securities laws.[63]

Section 624 also authorizes the Commission to exclude other communications from the definition of ''marketing solicitation.''[64] We do not propose to exercise that authority at this time. We solicit comment, however, on whether there are other communications that we should exclude from the definition of ''solicitation.''

We also request comment on whether, and to what extent, various tools used in Internet marketing, such as pop-up ads, could constitute marketing solicitations as opposed to communications directed at the general public. Commenters are invited to discuss whether the Commission should provide persons subject to the rules with further guidance to address Internet marketing.

Person

Proposed paragraph (o) of § 247.3 defines ''person'' to mean any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. A person could act through an agent, such as a licensed agent (in the case of an insurance company), a trustee (in the case of a trust), or any other agent. For purposes of this proposed rule, actions taken by an agent on behalf of a person that are within the scope of the agency relationship would be treated as actions of that person.

Pre-Existing Business Relationship

Proposed paragraph (p) of § 247.3 defines ''pre-existing business relationship'' to mean a relationship between a person and a consumer based on: (1) A financial contract between the person and the consumer that is in force; (2) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and that person during the 18-month period immediately preceding the date on which a marketing solicitation is made or sent to the consumer; or (3) an inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which a marketing solicitation is made or sent to the consumer. While the proposed definition tracks the definition in Section 624 of the FCRA, it does not follow the statute exactly.[65]

Section 624 also authorizes the Commission to recognize any other circumstances that would constitute a pre-existing business relationship.[66] We do not propose to exercise that authority at this time. We solicit comment,

[46] 15 U.S.C. 78*o*(b).

[47] 15 U.S.C. 78c(a)(30).

[48] 15 U.S.C. 78c(a)(6). *See* note 32 above.

[49] 15 U.S.C. 78*o*(b), 78*o*–4(a)(2).

[50] 15 U.S.C. 78c(a)(44).

[51] 15 U.S.C. 78*o*(b), 78*o*–5(a)(2).

[52] 15 U.S.C. 78*o*(b)(11).

[53] *See* note 22 above, discussing the applicability of the proposed rules to notice-registered broker-dealers.

[54] 15 U.S.C. 1681a(d)(2)(A).

[55] 15 U.S.C. 1681 *et seq.*

[56] The Joint Proposal does not define the term ''GLB Act.''

[57] 15 U.S.C. 6801 *et seq.*

[58] The Joint Proposal does not define the term ''investment adviser.''

[59] 15 U.S.C. 80b–2(a)(11).

[60] The Joint Proposal does not define the term ''investment company.''

[61] 15 U.S.C. 80a–3.

[62] Thus, a business development company, which is an investment company but is not required to register with the Commission, would be subject to this part. *See* 15 U.S.C. 80a–2(a)(48).

[63] 15 U.S.C. 1681s–3(d)(2). As noted above, we use the term ''marketing solicitation'' as opposed to the term ''solicitation'' (which is the term used in Section 624 of the FACT Act) in the proposed rules to avoid any confusion with the concept of solicitation under the federal securities laws.

[64] *See* 15 U.S.C. 1681s–3(d)(2).

[65] *See* 15 U.S.C. 1681s–3(d)(1).

[66] *See* 15 U.S.C. 1681s–3(d)(1)(D).

however, on whether there are other circumstances that we should determine to fall within the definition of ''pre-existing business relationship.''

Transfer Agent

Proposed paragraph (q) of § 247.3 defines ''transfer agent'' to have the same meaning as in Section 3(a)(25) of the Exchange Act.[67]

You

Proposed paragraph (r) of § 247.3 defines entities within the scope of the proposed rules—brokers, dealers, investment companies, registered investment advisers, and registered transfer agents—as ''you.'' The term ''you'' is intended to make the rules easier to understand and to use.

Section 247.20 Use of Eligibility Information by Affiliates for Marketing

Proposed § 247.20[68] establishes the parameters of the requirement to provide a consumer with notice and a reasonable opportunity to opt out before a receiving affiliate uses eligibility information to make marketing solicitations to the consumer. As discussed above, the statute does not specify which affiliate must provide an opt-out notice to the consumer. The proposed rules would resolve this ambiguity by imposing certain duties on the communicating affiliate and certain duties on the receiving affiliate. These bifurcated duties are set forth in paragraphs (a) and (b).

Duties of a Communicating Affiliate

Proposed paragraph (a) of § 247.20 would set forth the duty of a communicating affiliate. Under the proposal, before a receiving affiliate could use eligibility information to make or send marketing solicitations to a consumer, the communicating affiliate would have to provide a notice to the consumer stating that this information may be communicated to and used by the receiving affiliate for marketing purposes, and must give the consumer a reasonable opportunity to opt out through some simple method. The requirements of notice and opt-out would only apply if a receiving affiliate uses eligibility information for marketing purposes. Thus, the requirements of proposed paragraph (a) would not apply if no eligibility information is communicated to affiliates, or if no receiving affiliate uses eligibility information to make marketing solicitations.

Proposed paragraph (a) would not apply if, for example, a financing company affiliated with a broker-dealer asks the broker-dealer to include financing-company marketing materials in periodic statements sent to consumers by the broker-dealer without regard to eligibility information. We invite comment on whether, given the policy objectives of Section 214 of the FACT Act, proposed paragraph (a) should apply if affiliated companies seek to avoid providing notice and opt-out by engaging in the ''constructive sharing'' of eligibility information to conduct marketing. For example, we request commenters to consider the applicability of paragraph (a) in the following circumstances: A consumer has a relationship with a broker-dealer, and the broker-dealer is affiliated with a financing company. The financing company provides the broker-dealer with specific eligibility criteria, such as consumers having a margin loan balance in excess of $10,000, for the purpose of having the broker-dealer make solicitations on behalf of the financing company to consumers that meet those criteria. Additionally, the consumer responses provide the financing company with discernable eligibility information, such as a response form that is coded to identify the consumer as an individual who meets the specific eligibility criteria.

Proposed paragraph (a) also includes two ''rules of construction'' that give further guidance regarding how affiliate marketing notices might be provided to consumers. The first rule of construction would permit the notice to be provided either in the name of a person with which the consumer currently does or previously has done business, or in one or more common corporate names shared by members of an affiliated group of companies that includes the common corporate name used by that person. This rule of construction also would provide three alternatives regarding the manner in which the notice may be given. First, a communicating affiliate could provide the notice to the consumer directly. Second, a communicating affiliate could use an agent to provide the notice, so long as the agent provides the notice in the name of the communicating affiliate or in a common corporate name.[69] When using an agent, the communicating affiliate would remain responsible for any failure of the agent to fulfill its notice obligations. Third, a communicating affiliate could provide a joint notice with one or more of its affiliates, as provided in § 247.24(c).[70]

This rule of construction is intended to strike a balance by allowing some flexibility regarding which entity or entities within an affiliated group would provide the notice, while ensuring that the notice is meaningful and designed to be effective. An opt-out notice provided to a consumer solely in the name of a receiving affiliate is not likely to be effective because the name of the receiving affiliate would not be recognizable to the consumer as an entity with which the consumer does or has done business. For example, if the consumer has a relationship with ''company ABC'' but the opt-out notice is provided solely in the name of ''company XYZ'' (which does not share a common family name with company ABC), the notice is not likely to be effective. Indeed, many consumers might disregard a notice from company XYZ on the assumption that the notice was unsolicited junk mail. If, however, the consumer has a relationship with company ABC and the opt-out notice is provided jointly in the name of all affiliated companies that share the ABC name and the XYZ name, the notice is likely to be effective because the consumer would recognize the name of company ABC. We request comment on this first proposed rule of construction.

As explained above, more than one affiliated company may play the role of communicating affiliate with regard to the same set of eligibility information. Thus, the second rule of construction makes clear that it is not necessary for each affiliate that communicates the same eligibility information to provide an opt-out notice to the consumer, so long as the notice provided by the initial communicating affiliate is broad enough to cover the communication to, and marketing use by, all subsequent affiliates. For example, if affiliate A communicates eligibility information to affiliate B, and affiliate B communicates the same information to affiliate C, affiliate B does not have to provide the consumer with a separate opt-out notice, so long as affiliate A's notice was broad enough to cover both B's and C's use of that information. Proposed Regulation S–AM provides examples to illustrate how these ''rules of construction'' work. We request comment on this second proposed rule of construction.

[67] 15 U.S.C. 78c(a)(25).

[68] For consistency and ease of reference, proposed Regulation S–AM retains the section numbering used by the Agencies in their proposed rules.

[69] Of course, if the agent is an affiliate of the person that provides the notice, that affiliate could not include any marketing solicitations of its own on or with the notice, unless one of the exceptions in paragraph (c) of this section applies. Even if the agent sending the notice is not an affiliate, the agent would only be permitted to use the information for limited purposes under the GLB Act privacy regulations. *See* 17 CFR 248.11.

[70] Section 247.8(c) is discussed more fully below.

Proposed paragraph (a) of § 247.20 contemplates that the opt-out notice would be provided to a consumer in writing or, if the consumer agrees, electronically. We request comment on whether there are circumstances in which oral notice and opt-out should be permitted. Commenters should indicate how an oral notice could satisfy the statutory ''clear and conspicuous'' standard.[71]

Duties of a Receiving Affiliate

Proposed paragraph (b) of § 247.20 sets forth the general duties of a receiving affiliate. In particular, a receiving affiliate could not use the eligibility information it receives from its affiliate to make marketing solicitations to a consumer unless, prior to such use the consumer has: (1) Been provided an opt-out notice (as described in paragraph (a) of § 247.20) that applies to that affiliate's use of eligibility information; (2) received a reasonable opportunity to opt out of that use through one or more simple methods; and (3) not opted out. We invite comment regarding the duties of a receiving affiliate.

Duties Predicated on Sharing ''Eligibility Information''

The requirements of proposed paragraphs (a) and (b) of § 247.20 would only apply when the information communicated to affiliates meets the definition of ''eligibility information,'' which, as explained above, would incorporate the concept of a ''consumer report,'' from Section 603(d) of the FCRA.[72] In light of the FCRA exceptions to the statutory definition of ''consumer report,'' we recognize that it might be burdensome to determine and track whether consumer report information is ''eligibility information'' (to which the notice and opt-out provisions of Section 624 apply) or information that may be shared with affiliates under other exceptions in the FCRA (to which the notice and opt-out provisions of Section 624 do not apply). If the proposal is adopted, persons seeking to minimize their compliance burden could satisfy the requirements of Section 624 by voluntarily offering consumers the ability to opt out of marketing based on information that is shared under *any* of the exceptions in Section 603(d)(2) of the FCRA.

Exceptions

Proposed paragraph (c) of § 247.20 incorporates the statutory exceptions to the affiliate marketing notice and opt-out requirements as set forth in Section 624(a)(4) of the FCRA. In particular, proposed paragraph (c) provides that the receiving affiliate need not comply with these requirements if: (1) It uses the information to make a marketing solicitation to a consumer with whom the affiliate has a pre-existing business relationship; (2) it uses the information to facilitate communications to an individual for whose benefit the affiliate provides employee benefit or other services under a contract with an employer related to and arising out of a current employment relationship or an individual's status as a participant or beneficiary of an employee benefit plan; (3) it uses the information to perform services for another affiliate, unless the services involve sending marketing solicitations on behalf of the other affiliate and that affiliate is not permitted to send such solicitations itself as a result of the consumer's decision to opt out; (4) it uses the information to make marketing solicitations in response to a communication initiated by the consumer; (5) it uses the information to make marketing solicitations in response to a consumer's request or authorization for a marketing solicitation; or (6) compliance with the requirements of proposed Regulation S–AM would prevent the affiliate from complying with any provision of state insurance laws pertaining to unfair discrimination in a state in which the affiliate is lawfully doing business.[73] We discuss several of these exceptions below.

Proposed paragraph (c)(1) clarifies that the notice and opt-out requirements of proposed Regulation S–AM would not apply when the receiving affiliate has a pre-existing business relationship with the consumer. As noted above, the term pre-existing business relationship would be defined to include situations in which: (1) The consumer has purchased, rented, or leased the affiliate's goods or services during the 18 months immediately preceding the date of the solicitation; or (2) the consumer has inquired about or applied for a product or service offered by the affiliate during the three-month period immediately preceding the date of the marketing solicitation.[74] These provisions are substantially similar to the definition of ''established business relationship'' under the amended Telemarketing Sales Rule (''TSR'').[75] That definition was informed by Congress' intent that the ''established business relationship'' exemption to the ''do not call'' provisions of the Telephone Consumer Protection Act[76] should be grounded on the reasonable expectations of the consumer.[77] Congress' incorporation of similar language in the definition of ''pre-existing business relationship''[78] suggests that it would be appropriate to consider the reasonable expectations of the consumer in determining the scope of this exception. Thus, for purposes of the proposed rules, an ''inquiry'' would include any affirmative request by a consumer for information, such that the consumer would reasonably expect to receive information from the affiliate about its products or services.[79] For example, a consumer would not reasonably expect to receive information from the affiliate if the consumer does not request information or does not provide contact information to the affiliate. Proposed paragraph (d)(1) of § 247.20 provides examples of the pre-existing business relationship exception.

Proposed paragraph (c)(3) of § 247.20 clarifies that the notice and opt-out requirements do not apply when the information is used to perform services for another affiliate. Of course, the exception would not apply if the other affiliate is not permitted to make or send marketing solicitations on its own behalf, for example as a result of the consumer's prior decision to opt out. Thus, when the notice has been provided to a consumer and the consumer has opted out, a receiving affiliate subject to the consumer's opt-out election could not circumvent the opt-out by instructing the communicating affiliate or another affiliate to make or send marketing

[71] Certain exceptions to the notice and opt-out requirement may be triggered by an oral communication from or with a consumer. These exceptions are contained in proposed paragraph (c) of § 247.4 and are discussed below.

[72] 15 U.S.C. 1681s–3(a)(1). See the discussion accompanying notes 14–16 above.

[73] *See* FCRA section 624(a)(4), 15 U.S.C. 1681s–3(a)(4).

[74] *See* discussion of proposed paragraph (p) of § 247.3. The proposed definition would also include situations in which (1) there is a financial contract in force between the affiliate and the consumer; or (2) the consumer and the affiliate have engaged in a financial transaction (including holding an active account or a policy in force or having another continuing relationship) during the 18 months immediately preceding the date of the solicitation.

[75] 16 CFR 310.2(n). The definition of an ''established business relationship'' has been incorporated into the telemarketing rule of the National Association of Securities Dealers as well. *See* NASD Rule 2212.

[76] 47 U.S.C. 227 *et seq.*

[77] H.R. Rep. No. 102–317, at 14–15 (1991). *See also* 68 FR 4580, 4591–4594 (Jan. 29, 2003).

[78] 149 Cong. Rec. S13,980 (daily ed. Nov. 5, 2003) (statement of Senator Feinstein).

[79] *See* 68 FR at 4594.

solicitations to the consumer on its behalf.[80]

Proposed paragraph (c)(4) of § 247.20 provides that the notice and opt-out requirements do not apply when the information is used in response to a communication initiated by the consumer. The proposed rule clarifies that this exception could be triggered by an oral, electronic, or written communication initiated by the consumer. To be covered by the proposed exception, any use of eligibility information would need to be responsive to the communication initiated by the consumer. For example, if a consumer calls an affiliate to ask about retail locations and hours, the affiliate could not use eligibility information to make marketing solicitations to the consumer about specific products because those solicitations would not be responsive to the consumer's communication. Conversely, if the consumer calls an affiliate to ask about its products or services, marketing solicitations related to those products or services would be responsive to the communication and thus permitted under the exception. The time period during which marketing solicitations remain responsive to the consumer's communication would depend on the facts and circumstances. The proposal contemplates that a consumer has not initiated a communication if an affiliate makes the initial call and leaves a message for the consumer to call back, and the consumer responds. Proposed paragraph (d)(2) of § 247.20 provides examples of the consumer-initiated communications exception.

Proposed paragraph (c)(5) of § 247.20 provides that the notice and opt-out requirements do not apply when the information is used to make marketing solicitations that have been affirmatively authorized or requested by the consumer. This provision could be triggered by an oral, electronic, or written authorization or request by the consumer. Under the proposal, a pre-selected check box would not constitute an affirmative authorization or request. We also would not consider boilerplate language in a disclosure or contract to constitute affirmative authorization. The exception in proposed paragraph (c)(5) could be triggered, for example, if a consumer opens a securities account with a broker-dealer and authorizes or requests to receive marketing solicitations about insurance from an insurance affiliate of the broker-dealer. Under this proposed exception, the consumer could provide the authorization or make the request either through the person with whom the consumer has a business relationship or directly to the affiliate that would make the marketing solicitation.[81] The duration of the authorization or request would depend on the facts and circumstances. Proposed paragraph (d)(3) of § 247.20 provides an example of the affirmative authorization or request exception.

The exceptions in proposed paragraphs (c)(1), (4), and (5) described above might overlap in certain situations. For example, if a consumer who has a securities account with a broker-dealer makes a telephone call to the broker-dealer's insurance affiliate and requests information about insurance, the insurance affiliate could use information about the consumer it obtains from the broker-dealer to make or send marketing solicitations in response to the telephone call. This could be done under the proposed exception in paragraph (c)(4) for responding to a communication initiated by the consumer. Because the consumer has made an inquiry to the insurance affiliate about its products and services, that inquiry could also trigger one of the possible proposed definitions of ''pre-existing business relationship'' as provided in paragraph (c)(1). In addition, the consumer's affirmative request could fit the proposed definition of a marketing solicitation authorized or requested by the consumer as provided in the exception in paragraph (c)(5). We request comment on the exceptions and examples in proposed paragraphs (c) and (d) of § 247.20.

Proposed paragraph (e) of § 247.20 provides that the notice and opt-out requirements of proposed Regulation S–AM do not apply to the use of eligibility information received by the receiving affiliate prior to the compliance date for these rules. The mandatory compliance date will be included in the final rules, if adopted. We request comment on what the mandatory compliance date should be and whether it should be different from the effective date of the final rules in order to permit institutions to incorporate the affiliate marketing notice into their next annual GLB Act privacy notice.

Finally, proposed paragraph (f) of § 247.20 clarifies the relationship between the affiliate sharing notice and opt-out under Section 603(d)(2)(A)(iii) of the FCRA and the affiliate marketing notice and opt-out required by new Section 624 of the FCRA.[82] Specifically, proposed paragraph (f) provides that nothing in proposed Regulation S–AM limits the responsibility of a company to comply with the notice and opt-out provisions of Section 603(d)(2)(A)(iii) of the FCRA before it shares information other than transaction or experience information among affiliates if it wishes to avoid becoming a consumer reporting agency.

Section 247.21 Contents of Opt-Out Notice

Proposed § 247.21 addresses the contents of the opt-out notice. Proposed paragraph (a) of § 247.21 requires the opt-out notice to be clear, conspicuous, and concise, and to accurately disclose: (1) that the consumer may elect to limit a person's affiliate from using eligibility information about the consumer that the affiliate obtains from the person to make marketing solicitations to the consumer; and (2) if applicable, that the consumer's election will apply for a specified period of time and that the consumer will be allowed to extend the election once that period expires. The notice also would have to provide the consumer with a reasonable and simple method to opt out.[83] Appendix A of proposed Regulation S–AM provides model forms that, in appropriate circumstances, would comply with paragraph (a). Use of a model form would not be required.

Proposed paragraph (b) of § 247.21 defines the term ''concise'' to mean a reasonably brief expression or statement. Proposed paragraph (b) also provides that a notice required by proposed Regulation S–AM could be concise even if it is combined with other disclosures required or authorized by federal or state law. Those disclosures include, but are not limited to, a notice under the GLB Act, a notice under Section 603(d)(2)(A)(iii) of the FCRA, and other similar consumer disclosures. In addition, paragraph (b) clarifies that the requirement for a concise notice would be satisfied by the appropriate use of one of the model forms in Appendix A of proposed Regulation S–AM. Use of the model forms, however, would not be required.

[80] Similarly, this exception would not permit a service provider to make or send marketing solicitations on its own behalf if eligibility information is communicated and the notice and opt-out provisions otherwise would apply.

[81] Nothing in this exception supersedes the restrictions contained in the TSR, including the operation of the ''Do-Not-Call List'' established by the Federal Trade Commission and the Federal Communications Commission.

[82] See note 7 above for a discussion of Section 603(d)(2)(A)(iii) of the FCRA.

[83] Proposed paragraph (a) of § 247.5 reflects the intent of Congress, as expressed in Section 624(a)(2)(B) of the FCRA, that the notice required by proposed Regulation S–AM must be ''clear, conspicuous, and concise,'' and that the method for opting out must be ''simple.''

Proposed paragraph (c) of § 247.21 provides that the notice could allow a consumer to choose from a menu of alternatives when opting out, such as opting out of receiving marketing solicitations from certain types of affiliates, or from marketing solicitations that use certain types of information or are delivered using certain methods of communication. If a person provides a menu of alternatives, one alternative would have to allow the consumer to opt out with respect to all affiliates, all eligibility information, and all methods of delivering marketing solicitations.

Proposed paragraph (d) of § 247.21 provides that, if a person chooses to give consumers a broader opt-out right than is required by law, the person could modify the contents of the opt-out notice to reflect accurately the scope of the opt-out right it provides. Appendix A includes Model Form A–3, which might be helpful for persons that wish to allow consumers to prevent all marketing from that person and its affiliates. Use of the model form, however, would not be required. We invite comment on proposed § 247.21.

Section 247.22 Reasonable Opportunity To Opt Out

Proposed paragraph (a) of § 247.22 provides that the communicating affiliate would have to allow the consumer a ''reasonable opportunity to opt out'' after delivery of the opt-out notice and before the receiving affiliate uses eligibility information to make marketing solicitations to the consumer. Given the variety of circumstances in which opt-out rights are provided, a ''reasonable opportunity to opt out'' should be construed as a general test that avoids setting a mandatory waiting period. A general standard would provide flexibility to allow receiving affiliates to use eligibility information to make marketing solicitations at an appropriate point in time, while assuring that the consumer is given a realistic opportunity to prevent such use of the information. Examples are given to illustrate what might constitute a reasonable opportunity to opt out in different situations. Although 30 days may be reasonable in most cases, a person could choose to give consumers more than 30 days in which to decide whether to opt out.[84] Whether a shorter waiting period would be adequate would depend on the circumstances.

Proposed paragraphs (b)(1), (2), and (3) of § 247.22 contain examples of reasonable opportunities to opt out. Proposed paragraphs (b)(1) and (2) contain examples of reasonable opportunities to opt out by mail or by electronic means, which are consistent with examples used in the GLB Act privacy rules.[85] Proposed paragraph (b)(3) provides an example of a reasonable opportunity to opt out when a consumer is required to decide, as a necessary part of proceeding with an electronic transaction, whether to opt out before completing the transaction. The person subject to proposed Regulation S–AM would need to provide a simple process at the Internet Web site that the consumer could use to opt out at that time. In this example, the opt out notice would automatically be provided to the consumer, such as through a non-bypassable link to an intermediate Web page, or ''speedbump.'' The consumer would be given a choice of either opting out or not opting out at that time through a simple process conducted at the Web site. For example, the consumer could be required to check a box on the Internet Web site in order to opt out or decline to opt out before continuing with the transaction. This example would not cover a situation in which the consumer is required to send a separate e-mail or visit a different Internet Web site in order to opt out. We seek comment on whether additional guidance or examples are needed regarding the reasonable opportunity to opt out.

Proposed paragraph (b)(4) of § 247.22 illustrates that including the affiliate marketing opt-out notice in a notice under the GLB Act could satisfy the reasonable opportunity standard. In this situation, the consumer should be allowed to exercise the opt-out in the same manner and should be given the same amount of time to exercise the opt-out as with respect to the GLB Act privacy notice. This example takes into account the statutory requirement that we consider methods for coordinating and combining notices.[86]

Some persons subject to proposed Regulation S-AM might have a policy of not allowing affiliates to use eligibility information for marketing purposes unless a consumer affirmatively consents, or ''opts in,'' to receiving such marketing solicitations. Proposed paragraph (b)(5) of § 247.22 clarifies that an ''opt-in'' would meet the requirement to provide a reasonable opportunity to opt out, so long as the consumer's affirmative consent is documented. A pre-selected check box on a Web form or boilerplate language in a contract would not be evidence of the consumer's affirmative consent.

The proposed rules do not require persons to disclose in their opt-out notices how long a consumer has to opt out before a receiving affiliate could begin making marketing solicitations based on the consumer's eligibility information. In this respect, the proposed rules are consistent with the GLB Act privacy rules. Persons subject to proposed Regulation S-AM might choose to include such disclosures in their notices, however. We request comment on this approach.

Section 247.23 Reasonable and Simple Methods of Opting Out

Proposed paragraph (a) of § 247.23 sets forth examples of reasonable and simple methods of opting out. These examples generally track the examples of reasonable opt-out means from Section 7(a)(2)(ii) of the GLB Act privacy rules,[87] with certain modifications to give effect to Congress' mandate in the FACT Act that the method of opting out also must be ''simple.'' Accordingly, the proposed example in paragraph (a)(2) of § 247.23 contemplates including a self-addressed envelope with the reply form and opt-out notice. In addition, if consumers are given the choice of calling a toll-free telephone number to opt out, we contemplate that the system would be adequately designed and staffed to enable consumers to opt out in a single phone call.

Proposed paragraph (b) of § 247.23 provides examples of methods of opting out that would not be reasonable and simple. These methods include requiring the consumer to write a letter or to call or write to obtain an opt-out form that was not included with the notice. In addition, a consumer who agrees to receive the opt-out notice in electronic form only, such as by electronic mail or at a Web site, would have to be allowed to opt out by the same or a substantially similar electronic form and should not be required to opt out solely by telephone or paper mail.

Section 247.24 Delivery of Opt-Out Notices

Proposed paragraph (a) of § 247.24 provides that a person would need to deliver its opt-out notices so that each consumer reasonably can be expected to receive actual notice. Under this proposal, opt-out notices that are

[84] As provided in proposed § 247.9(c), consumers retain a continuing right to opt out at any time. The ''reasonable opportunity'' standard determines when a receiving affiliate may begin the marketing use of eligibility information if the consumer has not responded within the given period.

[85] *See* 17 CFR 248.7(a)(2)(ii).

[86] *See* FACT Act section 214(b)(3), 15 U.S.C. 1681s–3 note.

[87] 17 CFR 248.7(a)(2)(ii).

delivered electronically could be delivered either in accordance with the electronic disclosure provisions in proposed Regulation S-AM or in accordance with the Electronic Signatures in Global and National Commerce Act.[88] For example, a person could e-mail its notice to consumers who have agreed to the electronic delivery of information and could provide the notice on its Internet Web site for consumers who obtain products or services electronically through that Web site.

As indicated by the examples provided in proposed paragraph (b) of § 247.24, the ''reasonable expectation of delivery'' standard is a lesser standard than actual notice. For instance, if a communicating affiliate mails a printed copy of its notice to the last known mailing address of a consumer, it has met its obligation even if the consumer has changed addresses and never receives the notice.

Proposed paragraph (c) of § 247.24 permits a person to provide a joint opt-out notice with one or more of its affiliates, so long as the notice is accurate with respect to each affiliate that issues the joint notice. A joint notice would not have to list each affiliate participating in the joint notice by its name. If each affiliate shares a common name, such as ''ABC,'' then the joint notice could state that it applies to ''all institutions with the ABC name'' or ''all affiliates in the ABC family of companies.'' If, however, one or more affiliates does not have ABC in its name, the joint notice would need to separately identify each affiliate or each group of affiliates with a common name. We invite comment regarding this proposed approach to joint notices.

Proposed paragraph (d)(1) of § 247.24 sets out rules that apply when two or more consumers (referred to in the proposed regulation as ''joint consumers'') jointly obtain a product or service, such as a joint securities account. In particular, a person could provide a single opt-out notice to joint accountholders. The notice would have to indicate whether the person will treat an opt-out election by one joint accountholder as applying to all of the associated accountholders, or whether each accountholder might opt out separately. The person could not require all accountholders to opt out before honoring an opt-out direction by one of the joint accountholders. Paragraph (d)(2) gives examples of the operation of these rules.

Proposed paragraph (d)(1)(vii) and the example in paragraph (d)(2)(iii) address the situation in which only one of two joint consumers has opted out. Those paragraphs are patterned after similar provisions in the GLB Act privacy rules.[89] However, Section 624 of the FCRA deals with the use of information for marketing by affiliates, rather than the sharing of information among affiliates; we request comment on whether, if only one joint consumer opts out, eligibility information about the entire joint account could be used for making marketing solicitations to the joint consumer who has not opted out.

Section 247.25 Duration and Effect of Opt-Out

Proposed § 247.25 addresses the duration and effect of a consumer's opt-out election. Proposed paragraph (a) of § 247.25 provides that a consumer's election to opt out is effective for the opt-out period, which is a period of at least five years beginning as soon as reasonably practicable after the consumer's opt-out election is received. Nothing in this paragraph limits the ability of affiliated persons to set an opt-out period of longer than five years, including an opt-out period that does not expire unless revoked by the consumer. No opt-out period, however, could be shorter than five years. If, for some reason, a consumer elects to opt out again while the opt-out period remains in effect, a new opt-out period of at least five years would begin upon receipt of each successive opt-out election.

Proposed paragraph (b) of § 247.25 provides that a receiving affiliate could not make or send marketing solicitations to a consumer during the opt-out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § 247.20(c)[90] or if the consumer has revoked the opt-out. Under this paragraph, the opt-out would be tied to the consumer, not to the information. Thus, if a consumer initially elects to opt out but does not extend the opt-out upon expiration of the opt-out period, the receiving affiliate could use all of the eligibility information it has received about the consumer from its affiliate, including eligibility information that it received during the opt-out period. However, if the consumer subsequently opts out again some time after the initial opt-out period has lapsed, the receiving affiliate could not use any eligibility information about the consumer it received from an affiliate on or after the mandatory compliance date for the rules under proposed Regulation S–AM, including any information it received during the period in which no opt-out election was in effect.[91]

Proposed paragraph (c) of § 247.25 clarifies that a consumer could opt out at any time. Thus, even if the consumer did not opt out in response to the initial opt-out notice or if the consumer's election to opt out is not prompted by an opt-out notice, the consumer could still opt out. Regardless of when the consumer opts out, the opt-out would have to be effective for at least five years.

Proposed paragraph (d) of § 247.25 describes how the termination of a consumer relationship affects the consumer's opt-out. Specifically, if a consumer's relationship with a person terminates for any reason when the consumer's opt-out election is in force, the opt-out would continue to apply indefinitely unless revoked by the consumer. We invite comment on proposed § 247.25.

Section 247.26 Extension of Opt-Out

Proposed § 247.26 describes the procedures for extending an opt-out. Proposed paragraph (a) of § 247.26 states that consumers would have to be provided with a new notice and a reasonable opportunity to extend their opt-out before a receiving affiliate could make marketing solicitations based on the consumer's eligibility information upon expiration of the opt-out period. The person who initially provided the notice, or its successor, would provide the extension notice. If an extension notice is not provided to the consumer, the opt-out period would continue indefinitely. The requirement to provide an extension notice upon expiration of the opt-out period would apply to any opt-out ''even, for example, if the consumer failed to opt out initially and informed the communicating affiliate of his or her opt-out at some later time. The consumer could extend the opt-out at the expiration of each successive opt-out period. Proposed paragraph (b) of § 247.26 provides that each opt-out extension would have to comply with § 247.25(a), which means that it would

[88] 15 U.S.C. 7001 *et seq.*

[89] *See* 17 CFR 248.7(d).

[90] As discussed above, proposed § 247.4(c) provides exceptions from the notice and opt-out requirements in several situations, including when the receiving affiliate has a pre-existing business relationship with the consumer or receives an affirmative request for marketing solicitations from the consumer or when the receiving affiliate provides employee benefits to the consumer or performs certain services on behalf of another affiliate.

[91] Section 624(a)(5) of the FCRA contains a non-retroactivity provision, which provides that nothing shall prohibit the use of information that was received prior to the date on which persons are required to comply with the regulations implementing Section 624. 15 U.S.C. 1681s–3(a)(5).

be effective for a period of at least five years.

Proposed paragraph (c) of § 247.26 addresses the contents of an extension notice.[92] Like the initial notice, an extension notice would have to be clear, conspicuous, and concise. Paragraph (c) provides some flexibility in the design and contents of the notice. Under one approach, the notice could accurately disclose the same items required to be disclosed in the initial opt-out notice under § 247.21(a), along with a statement explaining that the consumer's prior opt-out has expired or is about to expire, as applicable, and that the consumer must opt out again if he or she wishes to keep the opt-out election in force. Under another approach, the extension notice would provide: (1) That the consumer previously elected to limit affiliates from using eligibility information about the consumer to make marketing solicitations to the consumer; (2) that the consumer's election has expired or is about to expire, as applicable; (3) that the consumer may elect to extend his or her previous election; and (4) a reasonable and simple method for the consumer to extend the opt-out. We propose to give persons the flexibility to decide which of these forms of notice best meets their needs. We request comment regarding whether persons subject to proposed Regulation S–AM would plan to limit the duration of the opt-out, and on the relative burdens and benefits of providing limited or unlimited opt-out periods.

Proposed paragraph (d) of § 247.26 addresses the timing of the extension notice. An extension notice can be delivered to the consumer either a reasonable period of time before the opt-out period expires, or any time after the opt-out period expires, but before covered marketing solicitations are made to the consumer. Providing the extension notice a reasonable period of time before the opt-out period expires would facilitate the smooth transition of consumers who choose to change their elections. An extension notice given too far in advance of the expiration of the opt-out period, however, might confuse consumers. We do not propose to set a fixed time for what would constitute a ''reasonable period of time'' to send an extension notice before the opt-out period expires. A reasonable period of time could depend upon the amount of time given to the consumer for a reasonable opportunity to opt out, the amount of time necessary to process opt-outs, and other factors. Nevertheless, providing an extension notice on or with the last annual privacy notice required by the GLB Act privacy provisions to be sent to the consumer before the opt-out period expires would be deemed reasonable in all cases. Proposed paragraph (e) of § 247.26 makes clear that sending an extension notice to the consumer before the expiration of the opt-out period would not shorten the five-year opt-out period.

Opt-out elections under the GLB Act do not expire, and GLB Act notices typically state that the consumer need not opt out again if the consumer previously opted out. Thus, including an affiliate marketing opt out notice or an extension notice on an initial or annual notice under the GLB Act raises special issues. If a person chooses to make the affiliate marketing opt-out effective in perpetuity, the statement in the GLB Act notice would remain correct. However, the GLB Act statement would not be accurate with respect to the extension notice if the affiliate marketing opt-out is limited to a defined period of five or more years. In that case, the extension notice would have to make clear to the consumer the necessity of opting out again in order to extend the opt-out. We request comment on this interaction between FACT Act and GLB notices, including on whether the Commission should provide further guidance regarding how a communicating affiliate might ensure that the difference in opt-out rights is clear to consumers.

Section 247.27 Consolidated and Equivalent Notices

Proposed § 247.27 implements Section 624(b) of the FCRA,[93] and provides that a notice required by proposed Regulation S–AM could be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law. These notices might include but are not limited to the notice described in Section 603(d)(2)(A)(iii) of the FCRA [94] and the notice required by the privacy provisions of the GLB Act. A notice or other disclosure that is equivalent to the notice required by proposed Regulation S-AM, and that is provided to a consumer together with disclosures required by any other provision of law, would satisfy the requirements of proposed Regulation S–AM.

We request comment on whether persons subject to proposed Regulation S–AM would plan to consolidate their affiliate marketing notices with the GLB Act privacy notice or the affiliate sharing opt-out notice under Section 603(d)(2)(A)(iii) of the FCRA, whether we have provided sufficient guidance on consolidated notices, and whether consolidation would be helpful or confusing to consumers.

Appendix A

As noted above, we are proposing model forms as examples to illustrate how persons could comply with the notice and opt-out requirements of Section 624 of the FCRA and proposed Regulation S–AM. Appendix A includes three proposed model forms. Model Form A–1 is a proposed form of an initial opt-out notice. Model Form A–2 is a proposed form of an extension notice that could be used when the consumer's prior opt-out has expired or is about to expire. Model Form A–3 is a proposed form that persons subject to proposed Regulation S–AM could use if they offer consumers a broader right to opt out of marketing than is required by law.

Use of the model forms would not be mandatory. Persons subject to proposed Regulation S–AM could use the model forms, modify the model forms to suit particular circumstances, or use some other form, so long as the requirements of the proposed rules are met. For example, although Model Forms A–1 and A–2 use five years as the duration of the opt-out period, communicating affiliates could choose an opt-out period longer than five years and to substitute the longer time period in the opt-out notices. Alternatively, communicating affiliates could choose to treat the consumer's opt-out as effective in perpetuity and thereby omit from the initial notice any reference to the limited duration of the opt-out period or the right to extend the opt-out.

Each of the proposed model forms is designed as a stand-alone form. We anticipate that some persons might want to combine the affiliate marketing opt-out notice with a GLB Act privacy notice. If the notices are combined, we expect that persons would integrate the affiliate marketing opt-out notice with other required disclosures and avoid repetition of information such as the methods for opting out. Developing a model form that combines various opt-out notices, however, is beyond the scope of this rulemaking.

IV. Request for Comment

We request comment on all provisions of proposed Regulation S–AM described above, including suggestions for additional provisions or changes, and

[92] Persons subject to Regulation S–AM do not need to provide extension notices if they treat the consumer's opt-out election as valid in perpetuity unless revoked by the consumer.

[93] 15 U.S.C. 1681s–3 note.

[94] See note 7 above for a discussion of Section 603(d)(2)(A)(iii) of the FCRA.

comments on other matters that might have an effect on the proposal. Commenters are particularly invited to share suggestions on each of the proposed model forms and for how the opt-out notices can be made clear for consumers. Commenters are also urged to submit suggestions for additional model forms that might be helpful. We also encourage comment on the proposed examples and on any additional examples that commenters would find helpful.

V. Costs and Benefits of the Proposed Rule

The Commission is sensitive to the costs and benefits of its rules. Proposed Regulation S–AM would minimize compliance costs while enabling consumers to limit certain marketing solicitations from affiliated companies. The proposed rules would implement Section 214 of the FACT Act and would impose no significant costs beyond those required under the FACT Act. The Commission encourages comment to identify, discuss, analyze, and supply relevant data regarding the costs and benefits stemming from compliance with the proposed rules.

The proposed rules would require that consumers be provided with notice and an opportunity to opt out of receiving marketing solicitations that are based on the communication of the consumer's eligibility information [95] between a person and its affiliates. The notice and opt-out requirements are designed to benefit consumers by enabling them to limit certain marketing solicitations from affiliated companies. In addition, the proposed notice requirement should enhance the transparency of each company's affiliate marketing and information sharing practices.

The proposed rules would impose costs upon Covered Persons [96] that wish to engage in affiliate marketing based on the communication of eligibility information. Absent an exception, communicating affiliates [97] would be required to provide consumers with notice and an opportunity to opt out before a receiving affiliate could use the consumer's eligibility information for marketing purposes. The communicating affiliate would need to design and send notices and opt-out forms, design and implement systems for receiving consumer opt-outs, maintain accurate records of opt-outs, and provide extension notices upon expiration of the initial opt-out period. Receiving affiliates [98] would be required to ensure that they do not make marketing solicitations to a consumer based on the communication of eligibility information unless that consumer has been provided notice and an opportunity to opt out and has not opted out.

The proposed rules include several considerations that would minimize compliance costs for affected persons. First, as required by the FACT Act, the proposed rules would allow Covered Persons to combine their affiliate marketing opt-out notices with any other notice required by law, including the privacy notices required under the GLB Act.[99] Covered Persons are already required to provide privacy notices and to accept consumer opt-out elections related to information sharing. Second, the proposed rules would allow Covered Persons some flexibility to develop, distribute, and record the opt-out notices in the manner best suited to their business and needs. Third, the proposed rules are consistent and comparable with the rules proposed by the Agencies,[100] which would provide greater certainty to Covered Persons that are part of a family of affiliated companies because all affiliated companies would be subject to consistent requirements. Finally, the proposed rules include examples that would provide specific guidance regarding what type of policies and procedures could be developed.

According to Commission filings, there are approximately 6,768 broker-dealers, 5,182 investment companies, 7,977 registered investment advisers, and 443 registered transfer agents that could be subject to the proposed rules. However, whether a Covered Person actually would be required to provide notice and opt-out would depend on the information sharing policies of that person and the marketing policies of its affiliates.[101] Any Covered Person that does not have affiliates or that does not communicate eligibility information to its affiliates would not be required to comply with the notice and opt-out requirements. Even if a communicating affiliate shares eligibility information, notice and opt-out would not be required if the receiving affiliate does not use the information as a basis for marketing solicitations. Because the proposed rules allow for a single, joint notice on behalf of a common corporate family, Covered Persons would not be required independently to provide notices and opt-outs if they are included in an affiliate's notice. The proposed rules also incorporate a number of statutory exceptions that would further reduce the number of persons required to provide affiliate marketing notices. In light of these factors, for purposes of the Paperwork Reduction Act we have estimated that approximately 10% of Covered Persons, or 2,037 respondents, would be required to provide consumers with notice and an opt-out opportunity under the proposed rules.

If an institution is required to provide consumers notice and an opportunity to opt out, the notice could be combined with GLB Act privacy notices or with any other document, including other disclosure documents or account statements. We expect that most institutions that would be required to provide an affiliate marketing notice would combine that notice with some other form of communication.

For purposes of the Paperwork Reduction Act, we have estimated that 14,259 affiliated persons each would require 1 hour on average to review its information sharing and affiliate marketing policies and practices to determine whether notice and opt-out would be necessary. Assuming a cost of $125 per hour for managerial staff time, the total one-time cost of review would be approximately $1,782,375 (14,259 × $125). Once the review is complete, we have estimated that 2,037 Covered Persons actually would be required to provide notice and opt-out, and that those persons would need an average of 6 hours to provide initial notice and opt-out and 2 hours to design notices for new customers to receive on an ongoing

[95] The proposed definition of ''eligibility information'' would encompass any information that, if communicated, would be a ''consumer report,'' but for the FCRA's statutory exclusions for the sharing of transaction or experience information and for the sharing of information among affiliates. See note 7, above, for a discussion of the definition of ''consumer report.''

[96] ''Covered Persons'' include brokers, dealers, and investment companies, as well as investment advisers and transfer agents that are registered with the Commission.

[97] A ''communicating affiliate'' is a person that communicates eligibility information to one or more affiliated persons.

[98] A ''receiving affiliate'' is a person that receives eligibility information from an affiliated person.

[99] Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338 (1999).

[100] As described above, the FACT Act requires the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission, in addition to the Commission, to propose regulations implementing Section 214. These other entities are referred to collectively as the Agencies.

[101] For purposes of the Paperwork Reduction Act, we have estimated that approximately 70% of Covered Persons have affiliates. Statistics reported in registration forms filed by investment advisers show that approximately 70% of registered investment advisers have a corporate affiliate, and we estimate that other Covered Persons would report a rate of affiliation similar to that reported by registered investment advisers. See note 102 and accompanying text, below.

basis (a total of 8 hours per affected person, or 16,296 hours). We assume this time would be divided between senior staff, computer professionals, and secretarial staff, with review by legal professionals. Assuming an average per-hour staff cost of $95, the total cost would be $1,548,120 (16,296 × $95) in the first year. We have estimated that each of the 2,037 affected persons would spend approximately 2 hours per year (or 4,074 hours) delivering notices to new consumers and recording any opt-outs that are received on an ongoing basis. These tasks would not require managerial or professional involvement; thus, we estimate an average staff cost of $40 per hour, for a total annual cost of $162,960 (4,074 × $40).

We request comment that may assist in quantifying the costs and the benefits identified in this analysis. With regard to costs, please delineate start-up costs (including costs to update existing systems) as well as ongoing annual costs. We also request comment on any costs and benefits of proposed Regulation S–AM not identified here. We specifically invite comment on and data regarding the Commission's estimates that 70% of Covered Persons have affiliates and 10% of Covered Persons would be required to provide consumers with notice and opt-out under the proposed rules. We further request comment on and data regarding the anticipated costs of drafting affiliate marketing privacy notices and of implementing systems for tracking opt-outs and providing extension notices upon expiration of the opt-out period. We invite comment on and data regarding the likelihood of including affiliate marketing notices in other mailings, on the cost of combined versus stand-alone mailings, and on any anticipated savings due to the electronic transmission of affiliate marketing notices and opt-outs.

VI. Paperwork Reduction Act

Certain provisions of the proposed rules may constitute a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The Commission has submitted the proposed regulation to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Regulation S–AM: Limitations on Affiliate Marketing.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Summary of Collection of Information

Before a receiving affiliate could make marketing solicitations based on the communication of eligibility information from a communicating affiliate, the communicating affiliate would be required to provide a notice to each affected individual informing the individual of his or her right to prohibit such marketing. In addition, as a practical matter in order for the opt-outs to be effective, one or both affiliates would need to keep records of any opt-out elections. If the receiving affiliate intends to resume making marketing solicitations based on eligibility information upon expiration of the opt-out period, the communicating affiliate also would need to send an expiration notice and enable the consumer to extend the opt-out election if desired.

In drafting the proposed rules, we have attempted to retain procedural flexibility and to minimize compliance burdens except as required by the terms of the FACT Act. We believe that the proposed rules do not impose significant burdens in excess of the statutory requirements.

Proposed Use of Information

New Section 624 of the FCRA Act is intended to enhance the protection of consumer financial information in the affiliate marketing context and to enable consumers to limit marketing solicitations from affiliated companies that are based on eligibility information. Proposed Regulation S–AM is necessary to fulfill Congress' mandate in Section 214 of the FACT Act that the Commission must prescribe regulations to implement Section 624.

Respondents

According to Commission filings, there are approximately 6,768 broker-dealers, 5,182 investment companies, 7,977 registered investment advisers, and 443 registered transfer agents that could be subject to the proposed rules. However, we expect that only a fraction of all Covered Persons would be required to provide notice and opt-out to consumers. First, the proposed rules only apply to Covered Persons that have affiliates, and then only if receiving affiliates make marketing solicitations based on the communication of eligibility information. Based on a review of forms filed with the Commission, we estimate that approximately 70% of Covered Persons have a corporate affiliate.[102] However, we assume that many of those Covered Persons would not communicate eligibility information to their affiliates for marketing purposes and thus would not be subject to the notice and opt-out requirements of the proposed rules.[103] The proposed rules also incorporate a number of statutory exceptions that would further reduce the number of Covered Persons required to provide affiliate marketing notices. Moreover, even if notice is required, the proposed rules allow all affiliates within a common corporate family to provide a single, joint notice. Accordingly, Covered Persons that are required to provide affiliate marketing notices could be covered by the notice sent by one or more affiliates and would not be required to provide the notice independently. In light of these factors, we estimate that approximately 10% of Covered Persons, or 2,037 respondents, would be required to provide consumers with notice and an opt-out opportunity under the proposed rules.

Total Annual Reporting and Recordkeeping Burdens

Every Covered Person that has one or more affiliates likely would incur a one-time burden in reviewing its policies and business practices to determine the extent to which it communicates eligibility information to affiliates for marketing purposes and whether those affiliates make marketing solicitations based on the communication of that eligibility information. This determination should be straightforward for most entities, in part because the GLB Act privacy regulations already require Covered Persons to review their information sharing practices and disclose whether they share information with affiliates.[104] We have estimated that approximately 70% of all Covered Persons, or approximately 14,259 persons, have an affiliate. The amount of time required to review their policies would vary widely, from a few minutes for those that do not share eligibility information with affiliates to 4 hours or more for affiliated persons with more complex information sharing arrangements. We estimate that each

[102] This estimate is based upon statistics reported on Form ADV, the Universal Application for Investment Adviser Registration, which contains specific questions regarding affiliations between investment advisers and other persons in the financial industry. We estimate that other Covered Persons would report a rate of affiliation similar to that reported by registered investment advisers.

[103] For example, professional standards require investment advisers to preserve the confidentiality of information communicated by clients or prospects. *See* Association for Investment Management and Research, Standards of Practice Handbook 123, 125 (1996).

[104] *See* 17 CFR 248.6(a)(3) (initial, annual, and revised GLB Act privacy notices must include ''the categories of affiliates * * * to whom you disclose nonpublic personal information'').

affected person would require 1 hour on average to review its policies and practices, for a total one-time burden of 14,259 hours.

We have estimated that 2,037 Covered Persons would be required to provide notice and opt-out under the proposed rules. This process would consist of several steps. First, the affiliated person would need to create an affiliate marketing notice. The amount of time required to develop a notice should be reduced significantly by the inclusion of model forms in the proposed rules. Second, the notices would need to be delivered. The proposed rules allow that affiliate marketing notices could be combined with any other notice or disclosure required by law. We expect that most persons subject to proposed Regulation S–AM would combine their affiliate marketing notices with some other form of communication, such as an account statement or an annual notice under the GLB Act. Because those communications are already delivered to consumers, adding a brief affiliate marketing notice should not result in added costs for processing or for postage and materials.[105] Notices may be delivered electronically to consumers who have agreed to electronic communications, which would further reduce the costs of delivery. Third, as a practical matter, persons subject to proposed Regulation S–AM would need to keep accurate records in order to honor any opt-out elections and to track the expiration of the opt-out period. We cannot estimate with precision the number of actual notice mailings in any given year because that total would depend on the number of consumers who do business with each affected person. For purposes of the Paperwork Reduction Act, we estimate that the hour burden for developing, sending, and tracking the opt-out notices would range from 2–20 hours, with an average of 6 hours for each of the affected entities (12,222 hours total). We estimate that postage and materials costs for the notices would be negligible because the notices normally would be combined with other required mailings.

Because the notice and opt-out requirements represent a prerequisite to covered forms of affiliate marketing, most affected persons would provide notice within the first year after compliance with the proposed regulations would be required. However, additional notices may be required on a smaller scale as new customer relationships are formed. We anticipate that many affected persons would ensure delivery to new consumers with a minimum of additional effort by integrating the notices as a permanent part of account opening documents, initial privacy notices under the GLB Act, or some other form of regular communication. Accordingly, we estimate a one-time average burden of 2 hours for affected entities to create the notices (4,074 hours total) and an ongoing annual burden of 2 hours per year (4,074 hours total) to deliver the notices to new consumers and to record any opt-outs.

A consumer opt-out may expire at the end of five years, as long as the person that provided the initial notice provides the consumer with renewed notice and an opportunity to extend his or her opt-out election before any affiliate marketing may begin.[106] Designing, sending, and recording opt-out extensions notices would require additional hours and costs. However, because the initial opt-out period must last for at least five years, any burden related to extension notices would not arise within the first five years of the collection of information.

In sum, we estimate that each of 14,259 affiliated persons would require an average one-time burden of 1 hour to review affiliate marketing practices (14,259 hours total). We estimate that the approximately 2,037 persons required to provide notice and opt-out would incur an average first-year burden of 6 hours to provide notice and allow for consumer opt-outs, for a total estimated first-year burden of 12,222 hours. With regard to continuing notice burdens, we estimate that each of the approximately 2,037 persons required to provide notice and opt-out would incur a one-time burden of 2 hours to develop notices for new consumers (4,074 hours total) and an annual burden of 2 hours to deliver the notices and record any opt-outs (4,074 hours total). These estimates would represent a total one-time burden of 18,333 hours (14,259 plus 4,074), a total first-year burden of 12,222 hours, and an ongoing annual burden of 4,074 hours. Averaged across the first three years for which compliance would be required, the total average yearly burden would be 11,543 hours. We do not expect that Covered Persons will incur start-up or materials costs in addition to the staff time discussed above.

In addition to the general request for comment reflected below, we request comment on these estimates of the annual reporting and recordkeeping burdens. How many Covered Persons share eligibility information with affiliates that the affiliates use to send marketing solicitations? Are there exceptions to the notice requirements under proposed Regulation S–AM on which many Covered Persons are likely to rely? Are affiliated families of companies likely to review the sharing and marketing policies of their affiliates on an organizational basis, or is each affiliate likely to review its own policies? Are affiliated families of companies likely to provide a single joint notice covering all affiliates? Are Covered Persons likely to consolidate notices required under proposed Regulation S–AM with GLB Act privacy notices or with other customer communications? Are Covered Persons likely to extend the opt-out period for more than five years?

Retention Period for Recordkeeping Requirements

The proposed rules do not contain express provisions governing the retention of records related to opt-outs. However, the example discussing consumer ''opt-ins'' in § 247.22(b)(5) of the proposed rules would state that any opt-in must be documented. Moreover, as noted above, a person subject to proposed Regulation S–AM would need to keep some record of consumer opt-outs in order to know which consumers should not receive marketing solicitations based on eligibility information. These records would need to be retained for at least as long as the opt-out period of five or more years, so that the person responsible for providing the extension notice would know when that notice is required.

Collection of Information Is Mandatory

As noted, only Covered Persons that communicate eligibility information to their affiliates for marketing purposes would be required to comply with the notice and opt-out provisions of the proposed rules. However, assuming that no other exception applies, the disclosure and recordkeeping requirements are mandatory with respect to those persons.

Responses to Collection of Information Will Not Be Kept Confidential

The affiliate marketing notices and opt-out records would not be filed with or otherwise submitted to the Commission. Accordingly, we make no

[105] Because we assume that most affiliate marketing notices would be combined with other required mailings, we base our estimates on the resources required to integrate an affiliate marketing notice into another mailing, rather than on the resources required to create and send a separate mailing.

[106] In order to ease the burden of tracking each opt-out period, many affiliated persons may decide to implement an opt-out period of longer than five years, including a period that never expires.

assurance of confidentiality with respect to the collections of information.

Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(3) Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Any comments should make reference to File Number S7–29–04. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be made in writing, should refer to File Number S7–29–04, and should be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

VII. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act[107] requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with proposed rules and a Final Regulatory Flexibility Analysis (''FRFA'') with any final rules, unless the agency certifies that the rules would not have a significant economic impact on a substantial number of small entities.[108] The Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rules on small entities. Therefore, the Commission has prepared the following analysis and requests public comment in the following areas.

A. Reasons for the Proposed Rules

Section 214 of the FACT Act (which adds new Section 624 to the FCRA) generally prohibits a person from using certain information received from an affiliate to make marketing solicitations to a consumer, unless the consumer is given notice, as well as an opportunity and a simple method to opt out, of the possibility of receiving such solicitations. Section 214 also requires the Agencies and the Commission, in consultation and coordination with one another, to issue implementing regulations that are consistent and comparable to the extent possible. Proposed Regulation S–AM is comparable in all substantive respects to the proposed rules published by the Agencies. The Background and Explanation of the Proposed Rules at Sections I–II above further describe the reasons why the regulation is being proposed.

B. Statement of Objectives and Legal Basis

The proposed rules would implement Section 214 of the FACT ACT, which protects the privacy of consumer financial information by providing that consumers must receive notice and an opportunity to opt out before affiliated companies engage in marketing based on the sharing of certain consumer information. The objectives of the proposed rules are discussed in detail in the Background, Explanation of the Proposed Rules, and Section-by-Section Analysis at Sections I–III above. The legal basis for the proposed rules is Section 214 of the FACT Act,[109] as well as Sections 17, 23, and 36 of the Exchange Act,[110] Sections 31 and 38 of the Investment Company Act,[111] and Sections 204 and 211 of the Investment Advisers Act.[112]

C. Description of Small Entities to Which the Proposed Rules Would Apply

The proposed rules would apply to any Covered Person that communicates eligibility information to an affiliate or receives eligibility information from an affiliate for the purpose of using the information to make marketing solicitations. Of the entities registered with the Commission, 808 broker-dealers, 233 investment companies, 579 registered investment advisers, and 170 registered transfer agents are considered small entities.[113] Only affiliated entities would be subject to the proposed rules. Although we estimate that 70% of all Covered Persons have affiliates, we have no means to predict how whether small entities differ significantly from larger entities in their rates of corporate affiliation. We invite comment from small entities that would be subject to the proposed rules. We invite comment generally regarding information that would help us to quantify the number of small entities that may be affected by the proposed rules.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rules require entities subject to Section 624 of the FCRA to provide consumers with notice and an opportunity to opt out of affiliated persons' use of eligibility information for marketing purposes. The proposed rules require specific duties on the part of two groups of covered persons: communicating affiliates and receiving affiliates. The communicating affiliate would be responsible for providing the opt-out notice to consumers, as specified in the proposed rules. The receiving affiliate must not make marketing solicitations to consumers

[107] 5 U.S.C. 601 *et seq.*

[108] *See* 5 U.S.C. 603–605.

[109] Pub. L. 108–159, 117 Stat. 1952 (2003).

[110] 15 U.S.C. 78q, 78w, and 78mm.

[111] 15 U.S.C. 80a–30(a) and 80a–37.

[112] 15 U.S.C. 80b–4 and 80b–11.

[113] For purposes of the Regulatory Flexibility Act, under the Exchange Act a small entity is a broker or dealer that had total capital of less than $500,000 on the date of its prior fiscal year and is not affiliated with any person that is not a small entity. 17 CFR 240.0–10. Under the Investment Company Act a ''small entity'' is an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10. Under the Investment Advisers Act, a small entity is an investment adviser that ''(i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person that had total assets of $5 million or more on the last day of the most recent fiscal year.'' 17 CFR 275.0–7. A small entity in the transfer agent context is defined to be any transfer agent that (i) received less than 500 items for transfer and less than 500 items for processing during the preceding six months; (ii) transferred only items of issuers that would be deemed ''small businesses'' or ''small organizations'' under Rule 0–10 under the Exchange Act; (iii) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts at all times during the preceding fiscal year; and (iv) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0–10. 17 CFR 240.0–10.

who have opted out, as specified in the proposed rules.

For those entities that provide the Section 624 notice in consolidation with notices under the GLB Act or other federally mandated disclosures, the proposed rules impose very limited additional reporting or recordkeeping requirements. However, for persons that choose to send the notices separately, the reporting and recordkeeping requirements may be more substantial. Although the proposed rules do not include specific recordkeeping requirements, in practice some system of recordkeeping must exist to ensure that any consumer opt-outs are honored.

Any analysis of the impact of the FACT Act and the proposed implementing regulations must take into consideration that the law is limited in scope. First, the new law only applies to the use of eligibility information by affiliates for the purpose of making marketing solicitations. Thus, affiliates that market based solely upon their own information or without regard to eligibility information are not affected by this law. Second, the law provides a number of exceptions, including by permitting affiliated persons to market to consumers with whom they have a ''pre-existing business relationship'' or from whom they have received a request for information.

A number of alternatives exist that could reduce the costs associated with compliance with the proposed rule. First, significant cost savings may be obtained by consolidating affiliate marketing notices with GLB Act privacy notices or with some other form of communication, such as account statements. In addition, we have included model forms for opt-out notices that would comply with the requirements of the proposed rules and that each person could customize to suit its needs if necessary. Furthermore, the proposed rules would permit affected persons to reduce recordkeeping requirements by offering a permanent opt-out from both the sharing of information between affiliates and from receiving marketing based on such sharing, which would be consistent with both the GLB Act and FCRA opt-outs as well as the affiliate marketing opt-out. Small entities may wish to consider whether consolidation of their notices and opt-outs can reduce their compliance costs. Similar considerations can reduce the burden of providing notice to new consumers. For example, small entities can combine affiliate marketing notices with account opening documents or initial privacy notices under the GLB Act in order to ensure that notices are delivered to new consumers without substantial additional efforts on the part of the affected person.

The Commission is concerned about the potential impact of the proposed rules on small entities. We request comment on the potential impact of any or all of the provisions in the proposed rules, including any benefits and costs, that the Commission should consider, as well as the costs and benefits of any alternatives, paying special attention to the effect of the proposed rules on small entities in light of the above analysis. Costs to implement and to comply with the proposed rules could include any expenditure of time or money for, for example, employee training, legal counsel, or other professional time; for preparing and processing the notices; and for recording and tracking consumers' elections to opt out.

E. Identification of Other Duplicative, Overlapping, or Conflicting Federal Rules

With the exception of the opt-out for affiliate sharing under Section 603(d)(2)(A)(iii) of the FCRA, we have been unable to identify any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rules. The overlap of the proposed rules with the affiliate sharing provisions of the FCRA is discussed in the Explanation of the Proposed Rules and the Section-by-Section Analysis at Sections II–III above. We seek comment regarding any other statute or regulation, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rules.

F. Discussion of Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives while minimizing any significant adverse impact on small businesses. In connection with the proposed rules, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rules for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed rules, or any part thereof, for small entities.

The Commission does not presently believe that an exemption from coverage or special compliance or reporting requirements for small entities would be consistent with the mandates of the FACT Act. Section 214 of the FACT Act addresses the protection of consumer privacy, and consumer privacy concerns do not depend on the size of the entity involved. However, we have endeavored throughout the proposed rules to minimize the regulatory burden on all Covered Persons, including small entities, while meeting the statutory requirements. Small entities should benefit from the existing emphasis on performance rather than design standards throughout the proposed rules and the use of examples, including model forms for affiliate marketing notices. The Commission welcomes comment on any alternative system that would be consistent with the FACT Act but would minimize the impact on small entities. Comments should describe the nature of any impact on small entities and provide empirical data to support the existence of the impact.

VIII. Analysis of Effects on Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act and Section 2(c) of the Investment Company Act require the Commission, whenever it engages in rulemaking and must consider or determine if an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when proposing rules under the Exchange Act, to consider the impact the proposed rules may have upon competition. Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We do not believe the proposed rules would result in anti-competitive effects. The proposed rules, which implement Section 214 of the FACT Act, would apply to all brokers, dealers, investment companies, registered investment advisers, and registered transfer agents. All other affiliated persons that make marketing solicitations based on the communication of eligibility information between affiliates would be subject to the substantially similar rules proposed by the Agencies. Therefore, all persons that engage in affiliate marketing based on eligibility information would be required to bear the costs of implementing the proposed rules or substantially similar rules. Although these costs would vary among

persons subject to proposed Regulation S–AM, we do not believe that the costs would be significantly greater for any particular entity or entities when calculated as a percentage of overall costs.

Moreover, we believe the proposed rules would have little effect on efficiency and capital formation. We have estimated that the proposed rules would result in some additional costs for persons that make marketing solicitations based on the communication of eligibility information by affiliates and on the affiliates that communicate that information. Nevertheless, we believe the additional costs are small enough that they would not affect the efficiency of these entities.

The Commission seeks comment regarding the impact of the proposed rules on efficiency, competition, and capital formation. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the potential effect of the proposed rules on the U.S. economy on an annual basis. Commentators are requested to provide empirical data to support their views.

IX. Statutory Authority and Text of Proposed Rules

The Commission is proposing Regulation S–AM under the authority set forth in Section 214 of the FACT Act,[114] Sections 17, 23, and 36 of the Exchange Act,[115] Sections 31 and 38 of the Investment Company Act,[116] and Sections 204 and 211 of the Investment Advisers Act.[117]

List of Subjects in 17 CFR Part 247

Affiliate marketing, Brokers, Dealers, Investment advisers, Investment companies, Transfer agents, Reporting and recordkeeping requirements.

Text of Proposed Rules

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations by adding part 247 to read as follows:

PART 247—REGULATION S–AM: LIMITATIONS ON AFFILIATE MARKETING

Sec.

Authority: 15 U.S.C. 1681s–3 and note; 15 U.S.C. 78q, 78w, 78mm, 80a–30(a), 80a–37, 80b–4, and 80b–11.

§ 247.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement the affiliate marketing provisions in section 214 of the Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108–159, 117 Stat. 1952 (2003) (''FACT Act''), which amends the Fair Credit Reporting Act.

(b) *Scope.* This part applies to brokers, dealers, and investment companies and to investment advisers and transfer agents that are registered with the Commission. These entities are referred to in this part as ''you.''

§ 247.2 Examples.

The examples in this part are not exclusive. The examples in this part provide guidance concerning the rule's application in ordinary circumstances. The facts and circumstances of each individual situation, however, will determine whether compliance with an example constitutes compliance with the applicable rule. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise.

§ 247.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* of a broker, dealer, or investment company, or an investment adviser or transfer agent registered with the Commission means any person that is related by common ownership or common corporate control with the broker, dealer, or investment company, or the investment adviser or transfer agent registered with the Commission. In addition, a broker, dealer, or investment company, or an investment adviser or transfer agent registered with the Commission will be deemed an affiliate of a company for purposes of this part if:

(1) That company is regulated under section 214 of the FACT Act, Pub. L. No. 108–159, 117 Stat. 1952 (2003), by a government regulator other than the Commission; and

(2) Rules adopted by the other government regulator under section 214 of the FACT Act treat the broker, dealer, or investment company, or investment adviser or transfer agent registered with the Commission as an affiliate of that company.

(b) *Broker* has the same meaning as in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)). A ''broker'' does not include a broker registered by notice with the Commission under section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)).

(c) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(d) *Commission* means the Securities and Exchange Commission.

(e) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(f) *Consumer* means an individual.

(g) *Control* of a company means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own more than 25 percent of the voting securities of any company will be presumed not to control the company. Any presumption regarding control may be rebutted by evidence, but, in the case of an investment company, will continue until the Commission makes a decision to the contrary according to the procedures described in section 2(a)(9) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(9)).

(h) *Dealer* has the same meaning as in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)). A ''dealer'' does not include a broker registered by notice with the Commission under section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)).

(i) *Eligibility information* means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the FCRA did not apply.

(j) *FCRA* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(k) *GLB Act* means the Gramm-Leach-Bliley Act (15 U.S.C. 6801 *et seq.*).

(l) *Investment adviser* has the same meaning as in section 202(a)(11) of the

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[114] Pub. L. 108–159, section 214, 117 Stat. 1952 (2003).

[115] 15 U.S.C. 78q, 78w, and 78mm.

[116] 15 U.S.C. 80a–30(a) and 80a–37.

[117] 15 U.S.C. 80b–4 and 80b–11.

Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

(m) *Investment company* has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), and includes a separate series of the investment company.

(n) *Marketing solicitation*—(1) *In general.* Marketing solicitation means marketing initiated by a person to a particular consumer that is:

(i) Based on eligibility information communicated to that person by its affiliate as described in this part; and

(ii) Intended to encourage the consumer to purchase or obtain such product or service.

(2) *Exclusion of marketing directed at the general public.* A marketing solicitation does not include communications that are directed at the general public and distributed without the use of eligibility information communicated by an affiliate. For example, television, magazine, and billboard advertisements do not constitute marketing solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(3) *Examples of marketing solicitations.* A marketing solicitation would include, for example, a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a specific consumer that is based on eligibility information communicated by an affiliate.

(o) *Person* means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(p) *Pre-existing business relationship* means a relationship between a person and a consumer based on:

(1) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a marketing solicitation covered by this part;

(2) The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which a marketing solicitation covered by this part is made or sent to the consumer; or

(3) An inquiry or application by the consumer regarding a product or service offered by that person during the 3-month period immediately preceding the date on which a marketing solicitation covered by this part is made or sent to the consumer.

(q) *Transfer agent* has the same meaning as in section 3(a)(25) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(25)).

(r) *You* means:

(1) Any broker or dealer;

(2) Any investment company;

(3) Any investment adviser registered with the Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*); and

(4) Any transfer agent registered with the Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1).

§§ 247.4 through 247.19 [Reserved]

§ 247.20 Affiliate use of eligibility information for marketing.

(a) *General duties of a person communicating eligibility information to an affiliate*—(1) *Notice and opt-out.* If you communicate eligibility information about a consumer to your affiliate, your affiliate may not use the information to make or send marketing solicitations to the consumer, unless prior to such use by the affiliate:

(i) You provide a clear and conspicuous notice to the consumer stating that the information may be communicated to and used by your affiliate to make or send marketing solicitations to the consumer about its products and services;

(ii) You provide the consumer a reasonable opportunity and a simple method to ''opt out'' of such use of that information by your affiliate; and

(iii) The consumer has not chosen to opt out.

(2) *Rules of construction*—(i) *In general.* The notice required by this paragraph may be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliated group of companies that includes the common corporate name used by that person, and may be provided in the following manner:

(A) You may provide the notice directly to the consumer;

(B) Your agent may provide the notice on your behalf, so long as:

(*1*) Your agent, if your affiliate, does not include any marketing solicitation other than yours on or with the notice, unless it falls within one of the exceptions in paragraph (c) of this section; and

(*2*) Your agent gives the notice in your name or a common corporate name or names used by the family of companies; or

(C) You may provide a joint notice with one or more of your affiliates or under a common corporate name or names used by the family of companies as provided in § 247.24(c).

(ii) *Avoiding duplicate notices.* If Affiliate A communicates eligibility information about a consumer to Affiliate B, and Affiliate B communicates that same information to Affiliate C, Affiliate B does not have to give an opt-out notice to the consumer when it provides eligibility information to Affiliate C, so long as Affiliate A's notice is broad enough to cover Affiliate C's use of the eligibility information to make marketing solicitations to the consumer.

(iii) *Examples of rules of construction.* A, B, and C are affiliates. The consumer currently has a business relationship with Affiliate A, but has never done business with Affiliates B or C. Affiliate A communicates eligibility information about the consumer to B for purposes of making marketing solicitations. B communicates the information it received from A to C for purposes of making marketing solicitations. In this circumstance, the rules of construction would:

(A) Permit B to use the information to make marketing solicitations if:

(*1*) A has provided the opt-out notice directly to the consumer; or

(*2*) B or C has provided the opt-out notice on behalf of A.

(B) Permit B or C to use the information to make marketing solicitations if:

(*1*) A's notice is broad enough to cover both B's and C's use of the eligibility information; or

(*2*) A, B, or C has provided a joint opt-out notice on behalf of the entire affiliated group of companies.

(C) Not permit B or C to use the information to make marketing solicitations if B has provided the opt-out notice only in B's own name, because no notice would have been provided by or on behalf of A.

(b) *General duties of an affiliate receiving eligibility information.* If you receive eligibility information from an affiliate, you may not use the information to make or send marketing solicitations to a consumer, unless the consumer has been provided an opt-out notice, as described in paragraph (a) of this section, that applies to your use of eligibility information and the consumer has not opted out.

(c) *Exceptions.* The provisions of this part do not apply if you use eligibility information you receive from an affiliate:

(1) To make or send a marketing solicitation to a consumer with whom

you have a pre-existing business relationship as defined in § 247.3(p);

(2) To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this shall not be construed as permitting you to make or send marketing solicitations on your behalf or on behalf of an affiliate if you or the affiliate, as applicable, would not be permitted to make or send the marketing solicitation as a result of the election of the consumer to opt out under this part;

(4) In response to a communication initiated by the consumer orally, electronically, or in writing;

(5) In response to an affirmative authorization or request by the consumer orally, electronically, or in writing to receive a marketing solicitation; or

(6) If your compliance with this part would prevent you from complying with any provision of state insurance laws pertaining to unfair discrimination in any state in which you are lawfully doing business.

(d) *Examples of exceptions*—(1) *Examples of pre-existing business relationships.*

(i) If a consumer has an insurance policy with your insurance affiliate that is currently in force, your insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it has received from you to make marketing solicitations.

(ii) If a consumer has an insurance policy with your insurance affiliate that has lapsed, your insurance affiliate has a pre-existing business relationship with the consumer for 18 months after the date on which the policy ceases to be in force and can therefore use eligibility information it has received from you to make marketing solicitations for 18 months after the date on which the policy ceases to be in force.

(iii) If a consumer applies to your affiliate for a product or service, or inquires about your affiliate's products or services and provides contact information to your affiliate for receipt of that information, your affiliate has a pre-existing business relationship with the consumer for 3 months after the date of the inquiry or application and can therefore use eligibility information it has received from you to make marketing solicitations for 3 months after the date of the inquiry or application.

(iv) If a consumer makes a telephone call to a centralized call center for an affiliated group of companies to inquire about the consumer's securities account, the call does not constitute an inquiry with any affiliate other than the broker-dealer that holds the consumer's securities account and does not establish a pre-existing business relationship between the consumer and any affiliate of the broker-dealer.

(2) *Examples of consumer-initiated communications.* (i) If a consumer who has an account with you initiates a telephone call to your insurance affiliate to request information about insurance and provides contact information for receiving that information, your insurance affiliate may use eligibility information about the consumer it obtains from you to make marketing solicitations in response to the consumer-initiated call.

(ii) If your affiliate makes the initial marketing call, leaves a message for the consumer to call back, and the consumer responds, the communication is not initiated by the consumer, but by your affiliate.

(iii) If the consumer calls your affiliate to ask about retail locations and hours, but does not request information about your affiliate's products or services, marketing solicitations by your affiliate using eligibility information about the consumer it obtains from you would not be responsive to the consumer-initiated communication.

(3) *Example of consumer affirmative authorization or request.* If a consumer who obtains brokerage services from you requests or affirmatively authorizes information about life insurance from your insurance affiliate, such authorization or request, whether given to you or to your insurance affiliate, would permit your insurance affiliate to use eligibility information about the consumer it obtains from you to make marketing solicitations about life insurance to the consumer. A pre-selected check box would not satisfy the requirement for an affirmative authorization or request.

(e) *Prospective application.* The provisions of this part shall not prohibit your affiliate from using eligibility information communicated by you to make or send marketing solicitations to a consumer if such information was received by your affiliate prior to [MANDATORY COMPLIANCE DATE PURSUANT TO THE FINAL RULE].

(f) *Relation to affiliate-sharing notice and opt-out.* Nothing in this part limits the responsibility of a company to comply with the notice and opt-out provisions of section 603(d)(2)(A)(iii) of the FCRA before it shares information other than transaction or experience information among affiliates to avoid becoming a consumer reporting agency.

§ 247.21 Contents of opt-out notice.

(a) *In general.* A notice must be clear, conspicuous, and concise, and must accurately disclose:

(1) That the consumer may elect to limit your affiliate from using eligibility information about the consumer that it obtains from you to make or send marketing solicitations to the consumer;

(2) If applicable, that the consumer's election will apply for a specified period of time and that the consumer will be allowed to extend the election once that period expires; and

(3) A reasonable and simple method for the consumer to opt out.

(b) *Concise*—(1) *In general.* For purposes of this part, the term ''concise'' means a reasonably brief expression or statement.

(2) *Combination with other required disclosures.* A notice required by this part may be concise even if it is combined with other disclosures required or authorized by federal or state law.

(3) *Use of model form.* The requirement for a concise notice is satisfied by use of a model form contained in Appendix A of this part, although use of the model form is not required.

(c) *Providing a menu of opt-out choices.* With respect to the opt-out election, you may allow a consumer to choose from a menu of alternatives when opting out of affiliate use of eligibility information for marketing, such as by selecting certain types of affiliates, certain types of information, or certain methods of delivery from which to opt out, so long as you offer as one of the alternatives the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivery.

(d) *Alternative contents.* If you provide the consumer with a broader right to opt out of marketing than is required by law, you satisfy the requirements of this section by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt-out rights. A model notice is provided in Appendix A of this part for guidance, although use of the model notice is not required.

§ 247.22 Reasonable opportunity to opt out.

(a) *In general.* Before your affiliate uses eligibility information

communicated by you to make or send marketing solicitations to a consumer, you must provide the consumer with a reasonable opportunity, following the delivery of the opt-out notice, to opt out of such use by your affiliate.

(b) *Examples of a reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(1) *By mail.* You mail the opt-out notice to a consumer and give the consumer 30 days from the date you mailed the notice to elect to opt out by any reasonable means.

(2) *By electronic means.* You notify the consumer electronically and give the consumer 30 days after the date that the consumer acknowledges receipt of the electronic notice to elect to opt out by any reasonable means.

(3) *At the time of an electronic transaction.* You provide the opt-out notice to the consumer at the time of an electronic transaction, such as a transaction conducted on an Internet Web site, and request that the consumer decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, so long as you provide a simple process at the Internet Web site that the consumer may use at that time to opt out.

(4) *By including in a privacy notice.* You include the opt-out notice in a GLB Act privacy notice and allow the consumer to exercise the opt-out within a reasonable period of time and in the same manner as the opt-out under the GLB Act, 15 U.S.C. 6801 *et seq.*

(5) *By providing an ''opt-in''.* If you have a policy of not allowing an affiliate to use eligibility information to make or send marketing solicitations to the consumer unless the consumer affirmatively consents, you give the consumer the opportunity to ''opt in'' by affirmative consent to such use by your affiliate. You must document the consumer's affirmative consent. A pre-selected check box does not constitute evidence of the consumer's affirmative consent.

§ 247.23 Reasonable and simple methods of opting out.

(a) *Reasonable and simple methods of opting out.* You provide a reasonable and simple method for a consumer to exercise a right to opt out if you:

(1) Designate check-off boxes in a prominent position on the relevant forms included with the opt-out notice required by this part;

(2) Include a reply form and a self-addressed envelope together with the opt-out notice required by this part;

(3) Provide an electronic means to opt out, such as a form that can be electronically mailed or processed at your Web site, if the consumer agrees to the electronic delivery of information; or

(4) Provide a toll-free telephone number that consumers may call to opt out.

(b) *Methods of opting out that are not reasonable or simple.* You do not provide a reasonable and simple method for exercising an opt-out right if you:

(1) Require the consumer to write his or her own letter to you;

(2) Require the consumer to call or write to you to obtain a form for opting out, rather than including the form with the notice; or

(3) Require the consumer who agrees to receive the opt-out notice in electronic form only, such as by electronic mail or at your Web site, to opt out solely by telephone or by paper mail.

§ 247.24 Delivery of opt-out notices.

(a) *In general.* You must provide an opt-out notice so that each consumer can reasonably be expected to receive actual notice. For opt-out notices you provide electronically, you may either comply with the electronic disclosure provisions in this part or with the provisions in Section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

(b) *Examples of expectation of actual notice*—(1) You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known mailing address of the consumer; or

(iii) For the consumer who obtains a product or service from you electronically, such as on an Internet Web site, post the notice on your electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular product or service.

(2) You may not reasonably expect that a consumer will receive actual notice if you:

(i) Only post a sign in your branch or office or generally publish advertisements presenting your notice; or

(ii) Send the notice via electronic mail to a consumer who has not agreed to the electronic delivery of information.

(c) *Joint notice with affiliates*—(1) *In general.* You may provide a joint notice from you and one or more of your affiliates, as identified in the notice, so long as the notice is accurate with respect to you and each affiliate.

(2) *Identification of affiliates.* You do not have to list each affiliate providing the joint notice by its name. If each affiliate shares a common name, such as ''ABC,'' then the joint notice may state that it applies to ''all institutions with the ABC name'' or ''all affiliates in the ABC family of companies.'' If, however, an affiliate does not have ABC in its name, then the joint notice must separately identify each family of companies with a common name or the institution.

(d) *Joint relationships*—(1) *In general.* If two or more consumers jointly obtain a product or service from you (joint consumers), the following rules apply:

(i) You may provide a single opt-out notice.

(ii) Any of the joint consumers may exercise the right to opt out.

(iii) You may either:

(A) Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) Permit each joint consumer to opt out separately.

(iv) If you permit each joint consumer to opt out separately, you must permit:

(A) One of the joint consumers to opt out on behalf of all of the joint consumers; and

(B) One or more joint consumers to notify you of their opt-out directions in a single response.

(v) You must explain in your opt-out notice which of the policies in paragraph (d)(1)(iii) of this section you will follow, as well as the information required by paragraph (d)(1)(iv) of this section.

(vi) You may not require *all* joint consumers to opt out before you implement *any* opt-out direction.

(vii) If you receive an opt-out by a particular joint consumer that does not apply to the others, you may use eligibility information about the others as long as no eligibility information is used about the consumer who opted out.

(2) *Example.* If consumers A and B, who have different addresses, have a joint checking account with you and arrange for you to send statements to A's address, you may do any of the following, but you must explain in your opt-out notice which opt-out policy you will follow. You may send a single opt-out notice to A's address and:

(i) Treat an opt-out direction by A as applying to the entire account. If you do so and A opts out, you may not require B to opt out as well before implementing A's opt-out direction.

(ii) Treat A's opt-out direction as applying to A only. If you do so, you must also permit:

(A) A and B to opt out for each other; and

(B) A and B to notify you of their opt-out directions in a single response (such as on a single form) if they choose to give separate opt-out directions.

(iii) If A opts out only for A, and B does not opt out, your affiliate may use information only about B to send marketing solicitations to B, but may not use information about A and B jointly to send marketing solicitations to B.

§ 247.25 Duration and effect of opt-out.

(a) *Duration of opt-out.* The election of a consumer to opt out shall be effective for the opt-out period, which is a period of at least 5 years beginning as soon as reasonably practicable after the consumer's opt-out election is received. You may establish an opt-out period of more than 5 years, including an opt-out period that does not expire unless the consumer revokes it in writing, or if the consumer agrees, electronically.

(b) *Effect of opt-out.* A receiving affiliate may not make or send marketing solicitations to a consumer during the opt-out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § 247.20(c) or if the opt-out is revoked by the consumer.

(c) *Time of opt-out.* A consumer may opt out at any time.

(d) *Termination of relationship.* If the consumer's relationship with you terminates when a consumer's opt-out election is in force, the opt-out will continue to apply indefinitely, unless revoked by the consumer.

§ 247.26 Extension of opt-out.

(a) *In general.* For a consumer who has opted out, a receiving affiliate may not make or send marketing solicitations to the consumer after the expiration of the opt-out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt-out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt-out, and the consumer does not extend the opt-out.

(b) *Duration of extension.* Each opt-out extension shall comply with § 247.25.

(c) *Contents of extension notice.* The notice provided at extension must be clear, conspicuous, and concise, and must accurately disclose either:

(1) The same contents specified in § 247.21(a) for the initial notice, along with a statement explaining that the consumer's previous opt-out has expired or is about to expire, as applicable, and that the consumer must opt out again if the consumer wishes to keep the opt-out election in force; or

(2) Each of the following items:

(i) That the consumer previously elected to limit your affiliate from using information about the consumer that it obtains from you to make or send marketing solicitations to the consumer;

(ii) That the consumer's election has expired or is about to expire, as applicable;

(iii) That the consumer may elect to extend the consumer's previous election; and

(iv) A reasonable and simple method for the consumer to opt out.

(d) *Timing of the extension notice*—(1) *In general.* An extension notice may be provided to the consumer either:

(i) A reasonable period of time before the expiration of the opt-out period; or

(ii) Any time after the expiration of the opt-out period but before any affiliate makes or sends marketing solicitations to the consumer that would have been prohibited by the expired opt-out.

(2) *Reasonable period of time before expiration.* Providing an extension notice on or with the last annual privacy notice required by the GLB Act that is provided to the consumer before expiration of the opt-out period shall be deemed reasonable in all cases.

(e) *No effect on opt-out period.* The opt-out period may not be shortened to a period of less than 5 years by sending an extension notice to the consumer before expiration of the opt-out period.

§ 247.27 Consolidated and equivalent notices.

(a) *Coordinated and consolidated notices.* A notice required by this part may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the FCRA and the GLB Act privacy notice.

(b) *Equivalent notices.* A notice or other disclosure that is equivalent to the notice required by this part, and that you provide to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of this part.

Appendix A to Part 247—Model Forms for Opt-Out Notices

A–1—Model Form for Initial Opt-Out Notice

Your Choice To Limit Marketing

• You may limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

• [Include if applicable.] Your decision to limit marketing offers from our affiliates will apply for 5 years. Once that period expires, you will be allowed to extend your decision.

• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To limit marketing offers [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *http://www.websiteaddress.com;* or

• Check the box below and mail it to:

[Company name]
[Company address]

__I do not want your affiliates to market their products or services to me based on information that you share with them.

A–2—Model Form for Extension Notice

Extending Your Choice To Limit Marketing

• You previously chose to limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

• Your choice has expired or is about to expire.

• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To extend your choice for another 5 years [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *http://www.websiteaddress.com;* or

• Check the box below and mail it to:

[Company name]
[Company address]

__I want to extend my choice for another 5 years.

A–3—Model Form for Voluntary ''No Marketing'' Notice

Your Choice To Stop Marketing

• You may choose to stop all marketing offers from us and our affiliates.

To stop all marketing offers [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box on the form below and mail it to:

[Company name]
[Company address]

__I do not want you or your affiliates to send me marketing offers.

Dated: July 8, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15875 Filed 7–13–04; 8:45 am]

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Federal Register

Wednesday,
July 14, 2004

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. FAA–2004–18596; SFAR No. XX; Notice No. 04–10]

RIN 2120–AI30

Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to address the traveling needs of persons on oxygen therapy by permitting the use of certain portable oxygen concentrator devices on aircraft, providing certain conditions are satisfied.

DATES: Send your comments on or before August 13, 2004.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18596 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James W. Whitlow, Office of the Chief Counsel, AGC–2, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3222; facsimile (202) 267–3227.

SUPPLEMENTARY INFORMATION: *Comments Invited:* Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with DOT personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by FAA before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2004–18596.'' The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

Background

The FAA is proposing this Special Federal Aviation Regulation (SFAR) to address the traveling needs of persons on oxygen therapy. The FAA has been made aware of the critical need for improved service to passengers who must travel with oxygen while on the aircraft. Consequently, the FAA is proposing this SFAR to permit the use of certain portable oxygen concentrator devices on aircraft, provided certain conditions are satisfied. The NPRM proposes to limit the SFAR to the AirSep LifeStyle Portable Oxygen Concentrator because this is the only device of this type the FAA has evaluated and determined to be safe. Other devices may be added to the SFAR after the FAA has been satisfied that they can be safely used on board aircraft. The FAA seeks comments, particularly technical information about other assistive devices which may be of benefit to users of medical oxygen delivery systems, to enable the FAA to evaluate the safety of these devices and the feasibility of including these devices in the SFAR. In order for an oxygen delivery system to be considered safe by the FAA for use onboard an aircraft, at a minimum the Research and Special Programs Administration (RSPA) must first determine that the device does not contain hazardous materials and is not subject to its hazardous materials regulations.

Currently, 14 CFR 121.574, 125.219, and 135.91 allow a passenger to carry and operate equipment generating, storing or dispensing medical oxygen on board an aircraft only if the equipment is furnished by the certificate holder and certain other conditions are satisfied. The oxygen furnished in compliance with these regulations is compressed oxygen, which is regulated as a hazardous material in transportation by the RSPA. Several of the conditions contained in §§ 121.574, 125.219, and 135.91 are designed to ensure that the oxygen cylinder is in compliance with RSPA's hazardous materials regulations. Other conditions are designed to ensure that the oxygen is dispensed safely while in use on the aircraft. Currently, air carriers are not required to provide medical oxygen and many regional carriers and some larger carriers do not provide this service. Those carriers that do allow passengers to use the medical oxygen typically provide the compressed oxygen themselves and charge a fee for this service.

Over the last two years, a new portability technology for dispensing medical oxygen to users has been brought to the FAA's attention— (1) the AirSep Corporation's LifeStyle Portable Oxygen Concentrator (POC), which is the first unit to be evaluated by the FAA; and (2) the Inogen, Inc.'s Inogen One POC, which is currently being evaluated by the FAA. The FAA has reviewed the documentation on both these products and had several discussions with their manufacturers regarding the use of these units on board aircraft. Based on information received to date, the FAA believes that the AirSep POC unit warrants special consideration for use on aircraft. The FAA currently is reviewing the Inogen One POC to determine if it too warrants such special consideration. Therefore, this proposed rule only pertains to the AirSep POC.

The AirSep POC, which does not contain hazardous materials, operates by separating oxygen from nitrogen and other gases comprising ambient air and dispensing it in concentrated form to the user at a purity level of approximately 90% (±3%). The AirSep units deliver five oxygen flow rates of 1 to 5 liters per minute. The AirSep units must have their filters changed by an authorized equipment distributor every 3000 hours. There is an hour meter on the device that notifies the user how many hours have gone by since the last maintenance check. The AirSep units may be operated either from an aircraft electrical outlet (if installed) or by a rechargeable battery with a duration of 50 minutes fully charged.

RSPA has reviewed and evaluated both the AirSep POC and the Inogen POC and determined that these devices are not regulated as hazardous materials in transportation. RSPA issued letters to the manufacturers stating this conclusion in May 2003 (AirSep POC) and March 2004 (Inogen POC).

While the RSPA determination is an important step for the FAA's review of the POCs, the FAA must still make an independent determination whether the devices pose a hazard in aviation. If there is no hazard, then the FAA could grant an exemption to petitioners from either § 121.574, 125.219, or 135.91, as applicable, allowing the use of the POCs because the FAA's regulations apply to devices that dispense oxygen. The FAA informed the portable oxygen community that an exemption would be needed in order for a passenger to carry on and operate a POC not furnished by the aircraft operator via a letter issued through the Department of Transportation's Office of the Secretary in November 2002. To date, the FAA has not yet received any petitions for exemption. The FAA has been informed that several air carriers are interested in this technology and are in the process of evaluating whether these devices interfere with the electrical, navigation or communication equipment on board its aircraft. Rather than waiting for a carrier to apply to the FAA for an exemption under the existing regulatory structure, the FAA has decided to propose an amendment to its regulations to permit passengers to carry on and operate their own POC on board an aircraft as long as certain conditions are met.

Section-by-Section Discussion of the Proposals

Section 1 of the SFAR would indicate that this SFAR prescribes special operating rules for the AirSep POC. It also establishes that the SFAR would apply to both the aircraft operator and the passenger using the POC. Section 2 would then define the AirSep POC.

Section 3 would establish the requirements for operating this device on board an aircraft. Section 3(a)(1) specifies that the aircraft operator is responsible for determining whether the device would interfere with the electrical, navigation or communication equipment aboard each aircraft on which the device is used. The operator is responsible for making this determination pursuant to 14 CFR 91.21, 121.306, 125.204, or 135.144. Given the broad array of aircraft and equipment combinations, only the operator can be responsible for making such a determination.

Section 3(a)(2) would mirror a safety warning contained in the AirSep Patient User Manual. In this Manual, AirSep states that leaving the nasal cannula under bed coverings or chair cushions while the POC is turned on but not in use could result in the oxygen ''mak[ing] the material flammable.'' However, the FAA has also been informed by AirSep that if the nasal cannula is not positioned to sense inhalation, no oxygen will flow from the cannula. The FAA seeks comments regarding risks associated with the POC being turned on but not in use.

Section 3(a)(3) would require the operator to assure that the user is capable of hearing the unit's various alarms, seeing the alarm light indicators, and taking the appropriate action in response to the alarm, or travel with someone who is capable of performing those functions. This proposed condition also mirrors several warning statements in the AirSep Patient User Manual. The POC is equipped with an alarm that will sound in the event that the unit fails to sense user breathing, overheats, or otherwise malfunctions. Section 3(b)(1) requires that the operator assure that the user turns off the unit in the event that the alarm sounds indicating a general malfunction of the unit while in use on the aircraft.

Section 3(a)(4) would prohibit the operator from allowing smoking or open flame within 10 feet of any person using a POC. The FAA's regulations at § 121.574, 125.219, and 135.91 require no less than 10 feet between a person smoking and a passenger using oxygen. Given the unique environment of an aircraft, and the devastating consequences that can occur in the event oxygen is used too close to someone who is smoking, the FAA is proposing a limit of at least 10 feet. While smoking is no longer allowed on scheduled flights, it may be permitted on non-scheduled flights.

Section 3(a)(5) requires that the operator prevent the air intake/gross particle filter and air outlet from being blocked while in use. The FAA believes it is important to include this statement in its conditions because blocking off the filter or outlet could result in the unit malfunctioning and having to be turned off.

Section 3(a)(6) and (7) would require that the device be stowed either underneath the seat in front of the user, or in another approved stowage location, and that the user is seated, so as not to restrict access to or use of any required emergency, or regular exit or of the aisle in the passenger compartment. These two conditions are consistent with the FAA's existing regulations and are necessary to ensure safe movement within the cabin, prevent injury from loose objects within the cabin and, if necessary, not obstruct evacuation of the aircraft.

Section 3(a)(8) would require the operator to ensure that the device is free from oil, grease or petroleum products. Again this condition is similar to a warning statement contained in the AirSep Patient User Manual and to a condition contained in the FAA's current medical oxygen regulations. This condition also obligates the operator to look at the condition of the device and ensure that it is free from damage and other signs of excessive wear or abuse. Section 3(a)(9) would require the operator to verify that the hour meter indicates that the hours will not exceed 3000 hours by the end of the scheduled flight time of that flight leg. Section 3(a)(10) would require the pilot in command to be notified when a passenger is using the portable oxygen concentrator on board the aircraft. This is consistent with current §§ 121.574, 125.219, and 135.91, and ensures that the pilot in command (PIC) is fully informed.

Section 3(b) would impose certain standards and requirements on the unit's user. Section 3(b)(1) would require the user to be capable of hearing the unit's alarms, seeing the alarm light indicators, and taking the appropriate action in response to the various alarms and alarm light indicators, or be traveling with someone who is capable of hearing the unit's alarms, seeing the alarm light indicators, and taking the appropriate action in response to the various alarms and alarm light indicators.

Section 3(b)(2) would obligate the user to turn off the unit if a warning alarm and associated alarm light indicator detects a general malfunction of the unit. However, FAA has received information from AirSep that a warning

alarm will sound if the gross particle filter or air outlet is blocked. According to AirSep, once the blockage is removed the alarm sound will stop and the unit does not need to be turned off. The FAA is seeking comments as to the various reasons an alarm may sound and how these situations can be remedied.

Section 3(b)(3) would mandate that the user must have a statement signed by a licensed physician that specifies the use of the POC and establishes the maximum flow rate corresponding to the pressure in the cabin of the aircraft under normal operating conditions.

Section 3(b)(4) would mirror the AirSep Patient User Manual by requiring that the user only use lotions or salves that are approved for use with oxygen.

Section 3(b)(5) stipulates that the user must ascertain from the aircraft operator the duration of the flight (including any anticipated delays) and provide a sufficient number of batteries to power the device for the duration of the flight, including reasonable delays. This proposal is not intended to require that the AirSep portable oxygen concentrator be powered by batteries as a condition of carriage. Rather, this portion of the NPRM proposes that a user have a sufficient number of batteries to potentially serve as a power source during all phases of flight. This condition is consistent with the means for determining the oxygen quantity needed for the duration of a flight contained in 14 CFR 121.574(a)(5).

The FAA seeks comments on the following questions. First, should the aircraft operator be required to inform the user about the availability of electrical outlets suitable for the AirSep portable oxygen concentrator? Second, should the user be required to carry batteries for the duration of the flight including reasonable delays if there are electrical outlets available on the flight? Third, are the meanings of the terms ''anticipated delay'' and ''reasonable delay'' sufficiently clear? In a related Office of the Secretary rulemaking under the Air Carrier Access Act, the Department will seek comment on whether carriers must permit users of AirSep portable oxygen concentrator to plug their devices into available on-board power outlets, consistent with FAA safety rules related to electronic devices.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this proposal.

Summary of Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified regulatory evaluation is not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis and review of regulations. If it is determined that the expected economic impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation.

This proposed SFAR would permit the use of certain portable oxygen concentrator (POC) devices on aircraft, provided certain conditions are satisfied. These conditions are described elsewhere in this document and would impose some costs on aircraft operators who choose to allow FAA approved POCs on board their aircraft. This proposal does not require operators to allow their use, however, and therefore it imposes no costs. The FAA assumes that operators who choose to allow POC use would voluntarily decide to take this action only if it were advantageous for them to do so. Since this proposal imposes no required costs, no economic evaluation was proposed.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Since meeting the requirements of this proposed SFAR is entirely voluntary on the part of the aircraft operators, it imposes no economic burden. Consequently, the FAA certifies that the rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create any unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries

and barriers affecting the import of foreign goods and services to the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed SFAR to be minimal and therefore has determined that this proposal will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This proposed SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

FAA analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. It determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has concluded that this notice of proposed rulemaking does not have federalism implications.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). FAA has determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Parts 121, 125, and 135

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation, Air taxis.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to add SFAR No.____ to Chapter II of Title 14, Code of Federal Regulations, as follows:

1. The authority citation for this SFAR shall read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Special Federal Aviation Regulation No. XX is added to read as follows:

Special Federal Aviation Regulation No. XX Rules for Use of Portable Oxygen Concentrator Systems on Board Aircraft

Section 1. Applicability—This rule prescribes special operating rules for the use of portable oxygen concentrator units on board civil aircraft. This rule applies to both the aircraft operator and the passenger using the portable oxygen concentrator on board the aircraft.

Section 2. Definitions—For the purposes of this SFAR the following definitions apply: AirSep LifeStyle Portable Oxygen Concentrator units are medical devices that: (1) Do not contain hazardous materials as determined by the Research and Special Programs Administration; (2) are regulated by the Food and Drug Administration; (3) provide oxygen therapy through pulse technology; and (4) assists a user of medical oxygen under a doctor's care. These units perform by separating oxygen from nitrogen and other gases comprising ambient air and dispenses it in concentrated form to the user.

Section 3. Operating requirements—(a) The AirSep LifeStyle Portable Oxygen Concentrator unit may be used by a passenger on board an aircraft provided the operator ensures that the following conditions are satisfied:

(1) The device does not cause interference with the electrical, navigation or communication equipment on the aircraft on which the device is to be used;

(2) The unit must be turned off if the nasal cannula is not positioned for oxygen delivery to the user;

(3) The user must be capable of seeing the alarm indicator lights, hearing the various warning alarms, and taking the appropriate action should the unit fail to detect the user's breathing or a general malfunction occurs, or is traveling with someone who is capable of performing those functions for the user;

(4) No smoking or open flame is permitted within 10 feet of any person using a portable oxygen concentrator;

(5) The air intake/gross particle filter or the air outlet must not be blocked during use;

(6) The unit must either be stowed under the seat in front of the user, or in another approved stowage location, so that it does not block the aisle way or the entryway into the row;

(7) No person using a portable oxygen concentrator is permitted to be seated in an exit row;

(8) The portable oxygen concentrator must be free from oil, grease or other petroleum products and be in good condition free from damage or other signs of excessive wear or abuse;

(9) The number of hours before maintenance must be below 3,000 at the end of the scheduled flight time for that flight leg; and

(10) The pilot in command must be apprised when a passenger is using a portable oxygen concentrator.

(b) The user of the portable oxygen concentrator must comply with the following conditions to use the device on board the aircraft:

(1) The user must be capable of hearing the unit's alarms, seeing the alarm light indicators, and taking the appropriate action in response to the various alarms and alarm light indicators, or be traveling with someone who is capable of performing those functions;

(2) In the event the warning alarm sounds, the portable oxygen concentrator unit must be turned off if the warning alarm and the associated alarm light indicator detects a general malfunction of the unit;

(3) The passenger must have a statement signed by a licensed physician that specifies the use of the portable oxygen concentrator and establishes the maximum flow rate corresponding to the pressure in the cabin of the aircraft under normal operating conditions;

(4) Only lotions or salves that are oxygen approved may be used by persons using the portable oxygen device; and

(5) The user must obtain from the aircraft operator the duration of the planned flight, including any anticipated delays. The user must provide a sufficient number of batteries to power the device for the duration of the flight, including any reasonable delays.

Issued in Washington, DC, on July 8, 2004.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 04–15969 Filed 7–13–04; 8:45 am]

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Vol. 69, No. 134

Wednesday, July 14, 2004

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TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, JULY

39811–40304 1
40305–40532 2
40533–40762 6
40763–41178 7
41179–41374 8
41375–41748 9
41749–41900 12
41901–42086 13
42087–42328 14

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7800 40299
7801 41179
Executive Orders:
11269 (See EO 13345) 41901
12163 (Amended by EO 13346) 41905
12757 (Revoked by EO 13345) 41901
12823 (Revoked by EO 13345) 41901
13028 (Revoked by EO 13345) 41901
13131 (Revoked by EO 13345) 41901
13227 (Amended by EO 13346) 41905
13261 (Amended by EO 13344) 41747
13344 41747
13345 41901
13346 41905
Administrative Orders:
Memorandums:
Memorandum of June 29, 2004 40531
Memorandum of July 5, 2004 42087
Presidential Determinations:
No. 2004–38 of June 24, 2004 40305
No. 2004–39 of June 25, 2004 40761

7 CFR

16 41375
301 ..... 40533, 41181
916 41120
917 41120
930 41383
981 ..... 40534, 41907
989 41385
1435 39811
Proposed Rules:
39 40819
3402 41763

8 CFR

103 39814
214 ..... 39814, 41388
299 39814

9 CFR

1 42089
2 42089
51 41909
78 40763
94 41915
Proposed Rules:
50 42288
51 ..... 41909, 42288
52 42288
53 42288
54 42288
55 42288
56 42288
57 42288
58 42288
59 42288
60 42288
61 42288
62 42288
63 42288
64 42288
65 42288
66 42288
67 42288
68 42288
69 42288
70 42288
71 42288
72 42288
73 42288
74 42288
75 42288
76 42288
77 ..... 40329, 42288
78 ..... 40556, 42288
79 42288
80 42288
81 42288
82 42288
83 42288
84 42288
85 42288
309 42288
310 42288
311 42288
318 42288
319 42288

10 CFR

2 41749

12 CFR

25 41181
201 41388
228 41181
345 41181
563e 41181
703 39827
704 39827
Proposed Rules:
Ch. VII 41202
701 39871
723 39873

13 CFR

Proposed Rules:
121 39874

14 CFR

25 ..... 40307, 40520, 40537

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 14, 2004

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock; published 6-14-04

DEFENSE DEPARTMENT
Vending Facility Program for the blind on Federal property; CFR part removed; published 7-14-04

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
New Mexico; published 6-16-03

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Foods and cosmetics:
Prohibited cattle materials; use; published 7-14-04

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Narragansett Bay, RI; Tall Ships Rhode Island 2004 event; safety and security zones; published 7-15-04

INTERIOR DEPARTMENT
National Park Service
Special regulations:
Canyonlands National Park, Salt Creek Canyon, UT; motor vehicle prohibition; published 6-14-04

LABOR DEPARTMENT
Mine Safety and Health Administration
Reporting and recordkeeping requirements; OMB control numbers; technical amendment; published 7-14-04

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Research misconduct investigation; published 7-14-04

NUCLEAR REGULATORY COMMISSION
Domestic licensing proceedings and issuance of orders; practice rules:
High-level radioactive waste disposal at geologic repository; licensing support network; electronic docket submissions; published 6-14-04

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 6-9-04
BAE Systems (Operations) Ltd.; published 6-9-04
Raytheon; published 6-9-04

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Safety regulations; periodic updates; published 6-14-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle, bison, and swine—
Fluorescense polarization assay; official test addition; comments due by 7-21-04; published 7-6-04 [FR 04-15213]
Plant-related quarantine, domestic and foreign:
Mexican Hass Avocado Import Program; comments due by 7-23-04; published 5-24-04 [FR 04-11709]
Correction; comments due by 7-23-04; published 6-16-04 [FR 04-13557]

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Emerging Markets Program; comments due by 7-22-04; published 6-22-04 [FR 04-13862]
Grassland Reserve Program; comments due by 7-20-04; published 5-21-04 [FR 04-11473]
Tobacco; comments due by 7-22-04; published 6-22-04 [FR 04-14063]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered Species Act:
Joint counterpart consultation regulation; comments due by 7-23-04; published 7-2-04 [FR 04-15051]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Buy America Act—
Nonavailable articles; comments due by 7-19-04; published 5-18-04 [FR 04-11209]
Buy American Act—
Nonavailable articles; comments due by 7-23-04; published 5-24-04 [FR 04-11596]
Gains and losses on disposition or impairment of depreciable property or other capital assets; comments due by 7-20-04; published 5-21-04 [FR 04-11458]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Outer Continental Shelf regulations—
California; consistency update; comments due by 7-23-04; published 6-23-04 [FR 04-14220]
Stratospheric ozone protection—
HCFC production, import, and export; allowance system; comments due by 7-19-04; published 6-17-04 [FR 04-13680]
HCFC production, import, and export; allowance system; comments due by 7-19-04; published 6-17-04 [FR 04-13681]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 7-21-04; published 6-21-04 [FR 04-13932]
Connecticut; comments due by 7-23-04; published 6-23-04 [FR 04-14219]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bifenthrin, etc.; comments due by 7-23-04; published 5-24-04 [FR 04-11673]
Indoxacarb; comments due by 7-19-04; published 5-19-04 [FR 04-11346]
Solid wastes:
Hazardous waste generator program evaluation; comments due by 7-21-04; published 4-22-04 [FR 04-09141]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 12-30-99 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
Hawaii; comments due by 7-19-04; published 6-18-04 [FR 04-13812]
Radio frequency devices:
Radio frequency identification systems; operation in 433 MHz band; comments due by 7-23-04; published 5-24-04 [FR 04-11537]
Radio stations; table of assignments:
Alabama and Georgia; comments due by 7-19-04; published 6-18-04 [FR 04-13808]

Consumer information; proper disposal; comments due by 7-23-04; published 6-8-04 [FR 04-12317]

TREASURY DEPARTMENT
Thrift Supervision Office

Fair and Accurate Credit Transactions Act; implementation:
Consumer information; proper disposal; comments due by 7-23-04; published 6-8-04 [FR 04-12317]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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H.R. 884/P.L. 108–270

Western Shoshone Claims Distribution Act (July 7, 2004; 118 Stat. 805)

H.R. 2751/P.L. 108–271

GAO Human Capital Reform Act of 2004 (July 7, 2004; 118 Stat. 811)

H.J. Res. 97/P.L. 108–272

Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003. (July 7, 2004; 118 Stat. 818)

S. 2017/P.L. 108–273

To designate the United States courthouse and post office building located at 93 Atocha Street in Ponce, Puerto Rico, as the "Luis A. Ferre United States Courthouse and Post Office Building". (July 7, 2004; 118 Stat. 819)

Last List July 7, 2004

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